

AGREEMENT OF LEASE

between

**BATTERY PARK CITY AUTHORITY,
d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY,
Landlord**

and

**PIER A BATTERY PARK ASSOCIATES, LLC,
Tenant
for operation of**

**the Building Known as "Pier A"
22 Battery Place
New York, New York
(comprising part of Block 16, Lot 1)**

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AGREEMENT OF LEASE (THE "LEASE"), made as of this ^{9th} day of March, 2011 (the "Effective Date"), by and between **Battery Park City Authority, d/b/a/ Hugh L. Carey Battery Park City Authority**, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, NY 10281, party of the first part, hereinafter referred to as LANDLORD or as BPCA, and **Pier A Battery Park Associates, LLC**, a Delaware limited partnership having an office at 93 Pearl Street, New York, NY 10004, party of the second part, hereinafter referred to as TENANT.

WITNESSETH:

WHEREAS, the City of New York (the "City") is the Landlord of the property known as Pier A in Manhattan, New York and certain lands under water and an upland area contiguous to Pier A, including the Building, underwater pilings, deck and interior and exterior systems, all designated as Block 16, Lot 1 on the Tax Map of the City of New York for the Borough of Manhattan, and all improvements now or hereafter located thereon, and including the breakwater adjacent to Pier A, but specifically excluding any and all development rights appurtenant to the foregoing property that are not utilized for the Project in accordance with the terms of the City Lease (as hereinafter defined, with the aforesaid property, subject to said exclusion, being referred to herein as the "Pier A Property"); and

WHEREAS, the City has leased the Pier A Property to BPCA (the "City Lease") for the purpose of redevelopment of said Property, for uses that will further the City's goal of promoting the development of the City's waterfront, and ancillary uses;

WHEREAS, Landlord desires to sublease to Tenant the portion of the Pier A Property comprising the entire interior space in the Building, for the exclusive use of Tenant during the Term (as hereinafter defined), to operate said space for the purposes hereinafter set forth, and to license portions of the Promenade and Plaza to Tenant, for use during the periods and for the purposes specified herein.

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon and subject to the terms, covenants and conditions hereinafter set forth.

1. Demised Premises:

(A) Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, for the Term set forth herein, the entire interior space, subject to the exceptions noted in subsection B, below (said interior space, subject to said exceptions, being referred to herein as the "Demised Premises" or the "Premises"), of the Building, which rests atop a pier that extends westward into the Hudson River, comprises a portion of Block 16, Lot 1 on the Tax Map of the Borough of Manhattan, City of New York, and is located at the southwest tip of Manhattan, immediately to the south of Battery Park City, and to the northwest of Historic Battery Park. A site plan showing the location of the Building, and the floor plans for each of the three floors, are attached hereto as Exhibit A. The gross square footage of the Demised Premises is 38,725 square feet. The first and second floors of the Building each contains approximately 15,000 gross square feet of space, while the third floor contains approximately 8,725 square feet.

(B) Nothing herein contained shall be construed as a letting by Landlord to Tenant of (1) the outer faces of exterior walls of the Demised Premises, (2) the space below the surface of the floor of the Demised Premises; (3) the land below, or air rights above, the Demised Premises, or (4) the roof of the Building. All space in or adjacent to the Demised Premises used for common areas, shafts, stacks, pipes, conduits, fan rooms, electric or other utilities or Building equipment comprising components of the

building systems installed by Landlord (as set forth in Exhibit D annexed hereto), as well as access thereto through the Demised Premises, for the purposes of operation, maintenance, and repair, are reserved to Landlord.

2. Term:

(A) This Lease is for a term (the "Term") beginning on the Commencement Date, and expiring (the "Expiration Date") at the close of business on the day immediately preceding the twenty-fifth (25th) anniversary of the Commencement Date (as defined below) (or, if the Commencement Date is other than the first day of a month, then the Expiration Date shall be the end of the month in which the 25th anniversary of the Commencement Date occurs) for the rental amount set forth in Article 3, below. As used herein, the term "Commencement Date" shall mean the earlier of (x) the date on which Tenant takes possession of the Demised Premises, and (y) the date on which Landlord's Work (as defined in Section 35) has been Substantially Completed, and Landlord delivers the Demised Premises to Tenant. As used herein, the term "Substantially Completed" means the finishing of Landlord's Work subject only to Punch List Items (as defined below), as certified by Landlord's Architect. Unless Landlord notifies Tenant to the contrary, "Landlord's Architect" refers to H3 Hardy Collaboration Architecture, LLC.

(B) Landlord shall notify Tenant when Landlord's Work has been Substantially Completed, and shall deliver to Tenant with said notice a copy of the certificate of Landlord's Architect referred to above. Tenant shall arrange with Landlord to inspect the Premises within 5 business days of such notification. Tenant shall notify Landlord of all Punch List Items (as hereinafter defined) within ten (10) business days after said inspection. Landlord shall endeavor to complete said Punch List Items within ten (10) business days after receipt of such list. As used herein, the term "Punch List Items" shall mean those items of Landlord's Work

(1) that have not been completed,

(2) are directly related to Tenant's Use (as defined in Section 6 (A)), with said items consisting of the provision of (a) the HVAC system, other than the interior distribution, (b) electrical connection to the Demised Premises, and the switchgear for the electrical service, (c) telecom connection stubbed to the interior of the Demised Premises, (d) fire protection, (e) fire alarm and (f) plumbing service, and

(3) as to which the extent of work remaining to be performed in order to effect completion does not, individually or in the aggregate, prevent Tenant from performing Tenant's Work (as defined in Section 36), and would not prevent Tenant from opening for business had Tenant's Work been completed.

Landlord shall perform the Punch List Items in a manner so as not to interfere with the performance by Tenant of Tenant's Work.

3. Rent:

(A) Base Rent

(1) Base Rent for the Premises shall be as follows, for each Lease Year (as hereinafter defined):

Lease Year 1:	\$ 750,000
Lease Year 2:	\$ 900,000
Lease Year 3:	\$ 1,200,000
Lease Year 4:	\$ 1,275,000
Lease Year 5:	\$ 1,375,000
Lease Years 6 through 10:	\$ 1,475,000
Lease Years 11 through 15:	\$ 1,600,000

Lease Years 16 through 20:	\$ 1,750,000
Lease Years 21 through 25:	\$ 1,900,000

(2) As used herein, the term "Lease Year" shall mean each period of twelve (12) consecutive months elapsing after (i) the Commencement Date of the Term, if the Term begins on the first day of a month, or (ii) the first day of the month following the Commencement Date of the Term if the Term begins on a date other than the first day of a month; provided, however, that, under such circumstances, Lease Year 1 shall also include the period between the Commencement Date and the first day of the following month.

(3) Notwithstanding anything to the contrary set forth above, Tenant shall be entitled to a Base Rent concession period commencing on the Commencement Date and ending on the one hundred eightieth (180th) day thereafter (the "Rent Commencement Date"). Base Rent shall be payable in advance, in equal installments, on the first day of each month during the Term, except that, if the Rent Commencement Date occurs on other than the first day of a month, the first installment shall be payable on the Rent Commencement Date, and shall be equal to the sum of (x) the rent for the period from the Rent Commencement Date until the end of the month in which it occurs, determined by prorating the total monthly rent for such period, and (ii) the rent for the full month following the month in which the Rent Commencement Date occurs.

(B) Percentage Rent

(1) (a) For the period commencing on the date Tenant shall first receive any Gross Sales (such date being hereinafter called the "Percentage Rent Commencement Date"), and for each Percentage Rent Year (as hereinafter defined) thereafter during the Term, Tenant shall pay to Landlord, for each such Percentage Rent Year, an amount ("Percentage Rent") determined as follows, which shall be computed quarterly, and paid as follows: for each Percentage Rent Year in which Gross Sales (as hereinafter defined) exceed \$ 18,000,000 ("Breakpoint"), (with such excess above the Breakpoint being referred to herein as the "Multiplicand"), Tenant shall pay to Landlord, as additional rent, an amount equal to eight percent (8%) of the Multiplicand derived from the Gross Sales with respect to the operations conducted by Tenant on the Premises, the Promenade and the Plaza.

(b) By way of example only, in the event the Gross Sales shall be equal to \$25,000,000 for any given Lease Year, then in such an event, the Percentage Rent due and owing by Tenant for such Lease Year shall be \$560,000, calculated as follows:

\$25,000,000 (Gross Sales) minus \$18,000,000 (Breakpoint) equals \$7,000,000 (excess over Breakpoint). The \$7,000,000 is multiplied by 8% (the Gross Sales percentage set forth above).

(c) As used herein, the term "Gross Sales" shall mean gross sales of all food, beverage, other menu items, merchandise, and goods and other services sold or performed by or for Tenant in, upon, or from the Premises, the Plaza, or the Promenade, whether for cash or credit (including, but not limited to, fees paid to Tenant by licensees). Gross Sales shall not include (i) sales and service taxes collected from customers and paid to the appropriate taxing authority, (ii) costs of management or employee meals, (iii) the discounted portion of menu prices whether by way of coupons, promotions or otherwise (iv) service or sales carrying charges, interest or other charges, however denominated, paid by customers solely for extension of credit; (v) goods returned to sources for full credit; (vi) transfers of goods in the ordinary course of business, without consideration, to another store or warehouse owned by or affiliated with Tenant; (vii) sale of fixtures, equipment or property which has been used at the Premises but is not stock in trade; (viii) income from vending machines, pay telephones, lockers maintained substantially for the use and convenience of Tenant's employees only and not open to the general public; (ix) amounts of discounts (provided that such discounts are at least equal to Tenant's mark-up) allowed to Tenant's employees pursuant to established discount policies; (x) receipt from sales to jobbers and transactions, without consideration, with any other store of Tenant, any affiliate of Tenant or with any concessionaire; (xi) sums received in settlement of claims for loss or damage of merchandise; (xii)

amounts retained by credit card companies, as the fee (as a percentage of sales) charged to Tenant by such credit card company for such service; (xiii) uncollected bad checks received by Tenant, and fraudulent (unpaid) purchases from Tenant; (xiv) gift certificates; or like vouchers, until such time as the same shall have been converted into a sale by redemption at the Demised Premises; (xv) rebates arising from construction costs and capital improvements and equipment and fixture purchases; (xvi) gratuities to employees, (xvii) any recovery of amounts in respect of tort or contract claims (other than claims for nonpayment of amounts that would have been Gross Sales), (xviii) refunds or rebates from third parties with respect to amounts paid or payable by Tenant for goods or services in connection with the development of the Demised Premises or the use or operation of said Premises (but excluding any in-kind payments to third parties who provide such goods or services), (xix) interest or other investment income earned from time to time by Tenant and (xxi) Capital Proceeds (as hereinafter defined). The fact that a particular item is listed as an Excluded Item shall not imply that such item would have been included in Gross Sales but for such listing.

"Capital Proceeds" shall mean (i) proceeds of any sale or other disposition of any direct or indirect interest in Tenant or Tenant's interest under the Lease (other than subleases, concessions, licenses or other agreements granted by Tenant for the use or occupancy of any part of the Premises), (ii) proceeds of any taking by, or conveyance to, any governmental authority as a result of, or in lieu of in anticipation of, the exercise of the right of condemnation or eminent domain (other than a temporary taking) of all or any part of the Premises or Tenant's interest therein, (iii) insurance proceeds (other than the proceeds of rents or business interruption insurance) or other recoveries on account of any casualty, damage or injury, by fire or otherwise, to the Premises or any part thereof, (iv) the value of, or the proceeds of the sale or other disposition of, federal rehabilitation tax credits, if any, under Section 47 of the Internal Revenue Code, and (v) proceeds of any loan, financing or other capital transaction.

(2) For the purposes of this Article 3 (B), Percentage Rent Year shall mean the calendar year. If the Percentage Rent Commencement Date shall occur on a day other than the first day of a Percentage Rent Year, the first Percentage Rent Year, for purposes of Percentage Rent payments, shall be the period from the Percentage Rent Commencement Date through the first day of the next succeeding calendar year, and the Breakpoint shall be prorated for such period.

(3) Tenant shall deliver to Landlord as soon as practicable after the end of each fiscal quarter in each Percentage Rent Year, but in no event later than thirty (30) days thereafter, a statement (the "Quarterly Percentage Rent Statement") showing in reasonable detail Gross Sales from the prior fiscal quarter, with the Restaurant Portion and the Events and Entertainment Portion (if any) shown separately, together with the computation of the amounts of said portions pursuant to Article 3 (B) (i) (a), above. The first Quarterly Percentage Rent Statement submitted by Tenant to Landlord, during a Percentage Rent Year, in which the Breakpoint is exceeded, shall be accompanied by payment of Percentage Rent incurred through the end of said quarter. If said quarter is not the last quarter of the Percentage Rent Year, then the payment for said quarter shall be credited against the annual payment.

(4) Tenant shall deliver to Landlord as soon as practicable after the end of each Percentage Rent Year, but in no event later than one hundred twenty (120) days thereafter, a separate statement (the "Annual Percentage Rent Statement") for such Percentage Rent Year showing in reasonable detail Gross Sales from the prior Percentage Rent Year, together with the computation of the amounts pursuant to Article 3 (B) (1) (a), above. Based upon the Annual Percentage Rent Statement submitted by Tenant to Landlord, Tenant shall make a payment of Percentage Rent simultaneously with the submission to Landlord of the Annual Percentage Rent Statement provided that i) the Gross Sales shall exceed the \$18,000,000 amount set forth in Article 3(B) (1) (a) above, and (ii) Tenant shall receive a credit for any Percentage Rent Payment made pursuant to subsection (c) (3), above.

(5) In connection with the payment by Tenant of Percentage Rent, the following additional provisions shall apply:

(a) Tenant shall at all times keep and maintain at the Premises books and records prepared on the basis required under subsection (b), below, showing in reasonable detail the

amount of Gross Sales. Unless consented to by Landlord, such books and records relating to any Percentage Rent Year shall not be destroyed or disposed of for a period of three (3) years after the end of such Lease Year. Landlord or its representatives shall have the right, one time each Percentage Rent Year, during regular business hours, on reasonable prior written notice, to examine, audit and/or photocopy all such books and records. If an audit by Landlord with respect to a Percentage Rent Year is not commenced within the aforesaid three (3) year period, the computation of the Percentage Rent paid by Tenant for such Percentage Rent Year shall not thereafter be subject to Landlord's audit and shall conclusively be deemed correct.

(b) Each Annual Percentage Rent Statement under this Lease shall be (i) prepared in accordance with generally accepted accounting principles consistently applied and (ii) verified by the chief financial officer or managing partner of Tenant, or if the managing partner of Tenant is not an individual, by the chief financial officer of such managing partner, as being true and correct to the best of his knowledge. Each Annual Percentage Rent Statement shall be certified by an independent public accounting firm (the "C.P.A." which is a firm approved by Landlord, which approval shall not be unreasonably withheld. Such certification shall include, without limitation, a statement by the C.P.A. that an examination of Tenant's books and records has been conducted by the C.P.A. in accordance with generally accepted auditing standards consistently applied and that the Annual Percentage Rent Statement has been prepared in accordance with generally accepted accounting principles consistently applied.

(c) If Landlord shall elect to conduct an audit of Tenant's books and records and such audit discloses an underpayment of Percentage Rent, Tenant shall pay to Landlord within thirty (30) days after demand the amount of such deficiency, plus interest thereon at the Base Rate (as defined below) from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of three and one-half percent (3.5%) of the amount alleged by Tenant to be payable, Tenant shall pay to Landlord within ten (10) days after demand all commercially reasonable costs incurred by Landlord in connection with such audit. As used herein, the term "Base Rate" and (ii) As used herein, the "Base Rate shall be the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office.

4. Use of Public Areas:

(A) Tenant acknowledges that the Plaza and Promenade (the "Public Areas") are intended to server primarily as public space. Nevertheless, Tenant may use portions of such areas, from time to time, subject to the terms and condition set forth in the introductory paragraph of Exhibit B hereto, and the payment by Tenant to Landlord of a license fee for such limited use.

(B) Landlord hereby grants to Tenant a license to use and maintain the Public Areas for the general purposes listed in Exhibit B (the "Public Areas License"), subject to the conditions and restrictions set forth herein. The fee for such License shall be \$ 60,000 per annum, subject to increase as hereinafter provided (the "License Fee"), payable in advance, in equal installments, on the first day of each month, commencing on the date when the Tenant first uses the Public Areas during the Term (the "Initial Use Date"), except that, if said Initial Use Date occurs on other than the first day of a month, the first installment shall be payable on said Initial Use Date, and shall be equal to the sum of (x) the License Fee for the period from said Initial Use Date until the end of the month in which it occurs, determined by prorating the total monthly rent for such period, and (y) the rent for the full month following the month in which the Initial Use Date occurs. The License Fee shall be increased by three (3%) on the second anniversary of the date on which the first monthly installment was paid, and on each successive second anniversary off the prior increase date, until the end of the Term. The increases shall be effected on a compound basis. Notwithstanding anything herein to the contrary, if Tenant conducts a special event on the Plaza Pursuant to the Public Areas License, Tenant shall responsible for (in addition to the maintenance required by Article (7) (B) (viii), above) the costs of all security required for said event.

Notwithstanding the foregoing, it is understood that the Plaza and Promenade have not yet been designed by BPCA. Consequently, while it is expected that Tenant shall be allowed to utilize the Plaza

and Promenade for outdoor dining and certain other uses generally as proposed by Tenant in the descriptions set forth in Exhibit B, all uses, events, programs, equipment, furnishings and furniture shall be subject to final detailed proposals by Tenant and written approval by BPCA on or following the Commencement Date of the Lease. It is acknowledged that the full list of potential uses referenced in Exhibit B reflect Tenant's desired utilization of the Promenade and Plaza, which may not be able to be accommodated within the Public Areas as ultimately designed. As a result, it is further acknowledged that each proposed use may not be approved by BPCA and/or may be restricted by BPCA in method, design, location and time. Any approval of such uses of the Public Areas, and any approval of any additional uses of the Demised Premises or any other portion of the Pier A Property which are ancillary to Tenant's Use Program, as described in Exhibit C hereto, shall not require, as a condition to such approval by BPCA, an increase in the Base Rent, License Fee or any other fee or charge due hereunder.

5. Impositions:

A. Tenant shall pay all impositions related to the Demised Premises or Tenant's tenancy thereof and which pertain to any period of time during the Term. For the purposes hereof "Imposition" or "Impositions" means.

(1) real property general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district) other than Real Property Taxes (as hereinafter defined);

(2) personal property taxes;

(3) occupancy and rent taxes;

(4) water, water meter and sewer rents, rates and charges;

(5) license and permit fees applicable to permits referenced in item VII, below, with the exceptions noted therein.

(6) service charges with respect to police and fire protection, street and highway construction, maintenance and lighting, sanitation and water supply;

(7) any other governmental excises, fines, levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever now or hereafter enacted; and

(8) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, incurred by reason of Tenant's failure to make any payments as herein provided.

B. As used herein, the term "Real Property Taxes" means the real property taxes assessed and levied against the Demised Premises or any part thereof (or, if the Demised Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes assessed and which would be levied if not for such exemption) pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of New York City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part,

C. Tenant shall pay each Imposition or installment thereof not later than the last date the same may be paid without incurring any interest or penalty. Tenant shall pay Impositions to the entity and at the location provided by the rules and regulations governing the payment of such Impositions as if Tenant owned the Demised Premises.

6. Use; "As Is":

(A) Tenant shall (a) use and occupy the Demised Premises for the purposes, and in implementation of the program, listed and described on Exhibit C annexed hereto, and for no other purpose; (b) obtain all necessary permits, licenses and approvals to operate the Premises in accordance with said use(s) (referred to herein as "Tenant's Use"), (c) operate and maintain the Premises for the use and enjoyment of the public, (d) [intentionally omitted]; (e) not at any time use or occupy the Demised Premises in violation of any temporary or permanent certificate or occupancy issued for the Building of which the Demised Premises are a part, or for the Demised Premises if a separate temporary or permanent certificate of occupancy is issued therefor, and (f) not at any time use the Demised Premises in violation of Article 52 hereof.

(B) BPCA will provide commercially reasonable and timely assistance to Tenant, at no cost to Tenant for said assistance, in obtaining any approval of Tenant's Use as may be required from the New York State Department of Environmental Conservation ("NYSDEC"), the New York State Historic Preservation Office ("SHPO"), or the New York City Department of City Planning ("DCP") and any other applicable governmental or quasi governmental agency. Tenant shall be responsible for using the Demised Premises in accordance with the terms of any approvals obtained from these agencies.

(C) Tenant has inspected the Demised Premises and accepts them as is, subject to the Substantial Completion of Landlord's Work, pursuant to Article 35 and Exhibit D annexed hereto. In any event, Landlord makes no representation as to the condition of the Demised Premises and Tenant agrees to accept the same subject to violations, whether or not of record. Notwithstanding the foregoing, Landlord represents and warrants as of the Commencement Date that the roof shall be free of any and all leaks, that the structural components of the building will be sound and that the plumbing, heating electrical and mechanical systems shall be in good and working order

(D) Under no circumstances shall Tenant be permitted to change Tenant's Use without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion.

7. Repairs and Maintenance:

(A) Tenant agrees, at Tenant's cost and expense, to keep and maintain the Demised Premises in good repair, order and condition and in accordance with industry standards, and in that regard to make all non-structural repairs thereto as and when needed to preserve the Demised Premises in good working order and condition, subject only to reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty excepted; and to make all repairs to installations made by Tenant in the Demised Premises, to any signs installed by Tenant, and to those portions of any pipes, lines, ducts, wires or conduits contained under, above or within, and serving the Demised Premises and which are not the responsibility of Landlord. Tenant's obligation of repair shall include, but not be limited, to keeping signs free of graffiti, including any signs which Landlord may permit Tenant to place on the exterior of the Building.

(B) Tenant, at its own sole cost and expense, shall: (i) keep all exterior and interior storefront surfaces clean and maintain the rest of the Demised Premises and all corridors and loading areas immediately adjoining the Demised Premises in a clean, orderly and sanitary condition; (ii) provide regular cleaning and maintenance schedules, which shall be subject to commercially reasonable approval by BPCA; (iii) use all reasonable efforts to minimize vibration and noise from all mechanical apparatus which may be transmitted beyond the confines of the Demised Premises; (iv) not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk or other non-public area adjacent to the Demised Premises; (v) use all reasonable efforts to minimize heat and odors from being transmitted from the Demised Premises; (vi) provide for snow removal in the area within twenty (20) feet from the Demised Premises; (vii) conduct regular pest control inspections and extermination and keep the Demised Premises free of any pest infestations (it being understood that, to the extent that Tenant applies pesticides to the Demised Premises, Tenant or any subcontractor hired by Tenant shall comply with Chapter 12 of the New York City Administrative Code; and (viii) daily clean up and remove all waste,

garbage, refuse, rubbish and litter from the Demised Premises, in the area within twenty (20) feet from the Demised Premises, and any portion of the Plaza or Promenade that Tenant is authorized to use pursuant to Article 4 hereof (whether or not within such area), to the extent that such waste, etc., arises from Tenant's use of the Plaza and/or Promenade. Tenant must provide adequate waste and recycling receptacles, and have these receptacles emptied on a daily basis and removed by private carter. Said receptacles shall be subject to approval by BPCA, and Tenant shall store the trash inside the Building until it is ready for pick up. Rubbish removal schedules, as well as the location and placement of all waste and recycling containers, will be subject to reasonable approval by BPCA. Tenant will be required to comply with all City, State and Federal regulations regarding recycling. Tenant recognizes that its failure to carry out its obligations under this subsection (B) shall materially adversely affect Landlord and its property and Landlord shall be entitled to immediate redress of the situation and damages caused thereby by any legal or equitable remedy available to Landlord.

(C) BPCA's responsibility for repair and maintenance shall be limited to (i) the underwater structural elements of the pier; (ii) the exterior of the Demised Premises including the Building shell and, structure, exterior walls, and roof, (iii) the replacement pier deck installed by BPCA over the existing deck; (iv) the portions of the building systems (including any plumbing, heating, ventilation and mechanic systems) initially installed by BPCA, as described in Exhibit D annexed hereto; (v) the sidewalks adjacent to the Demised Premises (except as otherwise provided in subsections (b) (vi) and (b) (viii), above, and (vi) the Promenade and the Plaza (except as otherwise provided herein, in association with Tenant's use of these spaces), in accordance with BPCA's normal standards and maintenance schedule. Notwithstanding anything herein to the contrary, if Tenant upgrades any building system installed in part by Landlord, then Tenant shall thereafter be responsible for the maintenance and repair of the entire system.

(D) Except as may be specifically provided elsewhere in this Lease, there shall be no allowance to Tenant for the diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord's making any repairs, maintenance alterations, additions or improvements (collectively, "Repairs") in or to any portion of the Building, the Demised Premises or the fixtures, appurtenances or equipment thereof (including, but not limited to, the erection of any crane, derrick or sidewalk shed), or failing to make any Repairs. It is specifically agreed that Tenant shall not be entitled to any set off or reduction of rent by reason of any failure of Landlord or others to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 7 with respect to the making of Repairs shall not apply in the case of fire or other casualty, which are dealt with in Article 11 hereof. Notwithstanding the foregoing, Landlord shall diligently proceed to perform such repair work and shall use all reasonable efforts to minimize interference with Tenant's business operations.

8. Alterations:

(A) Except for the Tenant's Work (as hereinafter defined), Tenant shall make no changes in or to the Demised Premises of any nature without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall complete the Tenant's Work subject to the terms and provisions of Article 36 and Exhibit E annexed hereto. Except for Tenant's Work, all alterations, additions, repairs, replacements and restoration to the Demises Premises shall be performed by Tenant (collectively, but not including Tenant's Work, "Alterations") and shall be done at such times as Landlord may from time to time reasonably designate. Notwithstanding the foregoing, cosmetic changes to the Demised Premises (painting, carpeting and millwork) shall require the consent of the Landlord) and shall not be deemed to be an Alteration.

(B) In addition to the Tenant's Work and subject to the prior written consent of Landlord, and to the provisions of this Article 8, as long as Pier A Battery Park Associates, LLC remains Tenant hereunder and in occupancy of the Demised Premises, (i) Landlord shall not unreasonably withhold its consent to any non-structural Alterations which Tenant proposes to make which do not affect utility services, fire safety systems, required access or egress, or plumbing and electrical lines, in or to the interior of the

Demised Premises, and which do not require the approval of any third party (it being understood, for example, that the interior walls and partitions on the second floor have been granted historic status by SHPO, and any consent by Landlord to the modification thereof shall be subject to approval by SHPO); and (ii) Tenant may, but shall not be obligated to, remove any Alterations made by Tenant, solely at its expense, provided Tenant promptly repairs any damage resulting from such removal, unless Landlord notifies Tenant that such alterations shall be required to be removed at the time Landlord may grant approval thereof.

(C) Tenant further agrees that: (i) before undertaking any Alterations, Tenant shall first submit to Landlord for Landlord's approval such plans and specifications as Landlord may reasonably require showing the work proposed to be done, prepared by such registered architect or engineer reasonably acceptable to Landlord (it being understood that, in connection with Tenant's Work, the submission of plans and specifications shall be effected per the terms set forth in Article 36 hereof); (ii) any Alterations shall be pursued to completion with diligence in a good and workmanlike manner and in compliance with the provisions of Articles 8 and 11 hereof; (iii) before undertaking Tenant's Work or any Alterations, Tenant, at Tenant's sole cost and expense, shall furnish to Landlord such bond or other form of undertaking as may be required pursuant to Section 5 of the Lien Law of the State of New York; and (iv) all materials and equipment to be incorporated in the Demised Premises as a result of Alterations shall be new or re-purposed materials and first quality or substantially equivalent quality in the case of re-purposed materials. Examination and approval of any plans and specifications by Landlord shall not mean that Landlord has approved them for compliance with governmental regulations, laws, or ordinances, or that Landlord has approved the quality or appropriateness of design.

(D) Notwithstanding anything herein to the contrary, Landlord's consent shall not be required with respect to any non-structural interior alterations made for cosmetic purposes (i.e., painting, carpeting or millwork), as long as (i) the cost of any individual project shall not exceed \$35,000, and (ii) no historic elements in the Demised Premises are affected by said alterations.

(E) Tenant shall, at its expense, before making any alterations, additions, installations or improvements (whether or not Landlord's prior consent is required) obtain all permits, approval and certificates required by any governmental or quasi-governmental bodies and, upon completion, certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Landlord. Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such insurance as is set forth in Article 34 hereof. All Alterations shall be performed in accordance with the Requirements (as defined in Article 11 hereof).

(F) (1) Tenant shall not create, cause to be created, nor suffer or permit to remain, any Lien, upon the following, other than pursuant to Section 16 (H) hereof:

(a) this Lease, the leasehold estate created hereby, the income therefrom, the Demised Premises, or any part of the Pier A Property;

(b) any assets of, or funds appropriated to, BPCA.

(2) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Demised Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, BPCA, Tenant shall, within thirty (30) days after it receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause such lien to be discharged of record, by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

(F) Notwithstanding anything herein to the contrary, if at any time after the Commencement Date, Tenant shall propose to materially alter the Demised Premises (said material alteration being referred to herein as a "Major Capital Improvement," as hereinafter defined, and the date of commencement thereof being referred to herein as the "Improvement Start Date"), Tenant shall comply with the requirements of subsections 1 and 2, below. As used herein, the term "Major Capital Improvement" shall mean (x) any

such Improvement proposed to be made in connection with a change in Tenant's Use, and (y) any such Improvement which would involve modifications of the structural, mechanical and or any other elements installed by Landlord as part of Landlord's Work. In connection with any proposed Major Capital Improvement,

(1) at least thirty (30) days in advance of the Improvement Start Date, Tenant shall submit to Landlord a detailed written narrative of the proposed Improvement;

(2) the provisions of Article 36 of this Lease shall apply, except that (a) in each instance in which, in Article 36, the term "Tenant's Work" is used, the term "Major Capital Improvement" shall be deemed substituted therefor, and (b) in each instance in which, in Article 36, the term "Commencement Date" is used, the term "Improvement Start Date" shall be deemed substituted therefor.

9. Ownership of Alterations:

(A) All Fixed Equipment (as hereinafter defined) shall, upon installation, become the property of the City, as the landlord under the City Lease, and shall remain upon and be surrendered with the Demised Premises, unless the City, by notice to Tenant no later than twenty (20) days prior to the date fixed as the termination of this Lease, elects to relinquish the Landlord's right thereto, in which case, at BPCA's option (to be exercised by notice to Tenant no more than ten (10) days before expiration of the Lease), it shall be Tenant's responsibility to remove Fixed Equipment, if BPCA so requires. As used herein, the term "Fixed Equipment" refers to all permanent fixtures and all paneling, partitions, railings and like installations, installed as an integral part of the Demised Premises at any time, either by Tenant or by Landlord on Tenant's behalf, such that such installations cannot be removed or replaced without damaging or altering the structural elements of the Demised Premises

(B) In either of the events referenced in subsection (A), above (i.e., removal of Fixed Equipment at the option of the City or BPCA), the same shall be removed by Tenant prior to the expiration of the Lease, at Tenant's expense. Nothing in this Article shall be construed to give Landlord or BPCA title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of same from the Demised Premises or upon removal of other installations as may be required by the City or BPCA, Tenant shall immediately and at its expense, repair and restore the Demised Premises to the condition existing prior to installation and repair any damage to the Demised Premises or the Building due to such removal. All property permitted or required to be removed by Tenant at the end of the Term remaining in the Demised Premises after Tenant's removal shall be deemed abandoned and may, at the election of the City (or of BPCA, if the City relinquishes its rights) either be retained as the City's (or, as applicable, BPCA's) property or removed from the Demised Premises by the City (or, as applicable, by BPCA), at Tenant's expense.

10. Window Cleaning:

Tenant will not clean nor require, permit, suffer or allow any window in the Demised Premises to be cleaned from the outside, except in accordance with the safety requirements of Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

11. Requirements of Governmental Authorities:

(A) In connection with Tenant's Work, and with the maintenance, management, use and operation of the Demised Premises and Tenant's performance of each and every one of its obligations hereunder, Tenant shall comply promptly with all Requirements (as hereinafter defined), without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Demised Premises, and regardless of whether such changes or additions are required by reason of any particular use to

which the Premises, or any part thereof, may be put. No actual or deemed consent to, approval of, or acquiescence in any plans or actions of Tenant by Landlord shall be relied upon or construed as being a determination that such are in compliance with the Requirements or, in the case of construction plans, are structurally sufficient. Notwithstanding the foregoing, nothing herein shall require Tenant to perform any structural work to the Demised Premises unless such Requirement arise out of the Tenant's Work or Tenant's particular manner of use of the Demised Premises.

(B) As used in this Lease, "Requirements" means:

(1) the Zoning Resolution of The City of New York (as the same may be amended and/or replaced), the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et. seq. (the "ADA"), and any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions, and requirements of all Governmental Authorities (as hereinafter defined) currently in force or hereafter adopted, applicable to the Demised Premises or any street, road, avenue, service areas, pier deck, or sidewalk comprising a part of, or lying in front of, the Demised Premises, or any vault in or under the Premises, or any body of water adjacent to, above, or below the Demised Premises (including, without limitation, the Building Code of New York City, and any applicable equivalent, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of the Landmarks Preservation Commission, the New York State Historic Preservation Office, and any applicable Fire Rating Bureau or other body exercising similar functions);

(2) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; and

(3) any temporary or permanent Certificate or Certificates of Occupancy or Completion at any time in force for the Building and/or the Demised Premises.

(C) It is understood that Tenant's obligation to comply with all Requirements shall include, but shall not be limited to, all Requirements relating to the ADA and environmental matters arising from Tenant's Use, whether or not such requirement would otherwise be the responsibility of Landlord under said laws, orders or regulations.

(D) As used in this Lease, the term "Governmental Authorities" means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water immediately adjacent to the Premises, or any vault in or under the Premises.

12. Subordination:

(A) This Lease is subject and subordinate to all ground or underlying leases (including, but not limited to, the City Lease) and to all mortgages which may now or hereafter affect such leases or the real property of which the Demised Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument or subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the Demised Premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Landlord or the City may request. Tenant shall not knowingly do or suffer or permit anything to be done which would constitute a default under any superior mortgage or superior lease (including the City Lease).

(B) Pursuant to Section 10.03 (a) of the City Lease, Landlord shall, within ten (10) Business Days of the execution of this Lease, deliver to the City a request for a non-disturbance agreement ("NDA") for the benefit of Tenant hereunder, confirming the rights and subject to the limitations described in Section 10.03 (a) of the City Lease, and accompanied by (1) a duplicate original or photocopy of this Lease, (2) a certificate of an independent real estate appraiser that complies with the provisions of Section 10.03 (a)

(i) of the City Lease, and (3) execution copies of the NDA to be signed by the City and Tenant, in the form annexed hereto as Exhibit H.

(C) Notwithstanding the provisions of Section 12 (B) above, Tenant acknowledges that (1) since Section 10.03 (a) of the City Lease states that the NDA shall be "in form and substance reasonably acceptable to [the City]," the City may require that changes be made to the form annexed hereto as Exhibit H as a precondition to its execution of such agreement, and (2) while Section 10.03 (b) of the City Lease states that "Landlord [i.e., the City] agrees to deliver to any Subtenant [in this case, the Tenant hereunder] entitled to the benefit of this Section 10.06 [sic – 10.03] a non-disturbance agreement in recordable form within forty-five (45) days after request by Tenant [i.e., BPCA]," BPCA shall have no liability whatsoever for the City's failure to deliver an NDA within said period.

13. Tenant's Liability and Indemnity:

(A) Landlord or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of Tenant, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the gross negligence or intentional tortious act or omission of Landlord, its agents, servants or employees (in which event Landlord shall indemnify and hold harmless Tenant from and against any and all liabilities, fines, suits, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) of any kind or nature incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof); Landlord or its agents shall not be liable for any damage caused by other tenants, subtenants or persons in, upon or about said Demised Premises or caused by operations in connection with any private, public or quasi public work.

(B) Tenant shall indemnify and save harmless Landlord, the City of New York, the New York City Economic Development Corporation, and their respective directors, officers, employees, agents and servants (collectively, the "Indemnitees") from and against (1) all claims of whatever nature against the Indemnitees arising from any act, omission or negligence of Tenant, its contractors, licensees, agents, servants, employees, invitees or visitors, (2) all claims against Landlord arising from any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring during the Term in or about the Demised Premises, and (3) all claims against Landlord arising from any accident, injury or damage which results or is claimed to have resulted from an act or omission of Tenant or Tenant's contractors, licensees, agents, servants, employees, invitees or visitors. This indemnity and hold harmless agreement shall include indemnity from and against any and all liabilities, fines, suits, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) of any kind or nature incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. The foregoing shall not exculpate Landlord from any negligent act or negligent omissions of Landlord, provided, however, Tenant agrees that Tenant shall provide defense of any action described in items (1) through (3) above in which Landlord shall be named as defendant. Tenant's liability hereunder extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Landlord in writing, such approval not to be unreasonably withheld. Tenant's indemnity set forth in this Article 13 shall extend and apply to each superior lessor and superior mortgagee. Notwithstanding anything herein to the contrary, Landlord shall be entitled to said indemnification only if the claim arises from the gross negligence or intentional tortious act or omission of Tenant.

(C) This Article 13 shall survive the expiration or other termination of this Lease.

14. Destruction, Fire and Other Casualty:

A. Tenant shall give immediate notice to Landlord and the City in case of fire or other casualty in the Demised Premises.

B. Within ninety (90) days of any fire or other casualty affecting the Demised Premises, Landlord shall provide to Tenant a reputable contractor's estimate of the time that will be required to obtain all necessary permits and approvals for and to perform the necessary repairs to the Building core and shell ("Estimated Landlord Restoration Period"). Within ninety (90) days of any fire or other casualty affecting the Demised Premises, Tenant shall provide to Landlord a reputable contractor's estimate of the time that will be required to obtain all necessary permits and approvals for and to repair and/or replace the Demised Premises fit out, equipment and furnishings ("Estimated Tenant Restoration Period").

C. (1) If all or a portion of the Demised Premises shall suffer substantial damage or be rendered untenable by fire or other casualty and the Estimated Tenant Restoration Period (as hereinafter defined) exceeds 19 months, with such Period to commence on the later to occur of (x) the occurrence of such damage, and (y) if applicable, the making by Landlord of any repairs to the Building, necessitated by the fire or other casualty, that may be required under subsection (2) hereof, or (b) the time remaining under the term of this Lease, or

(2) If so much of the Building's structure or basic systems shall be damaged that Tenant's access to and use and enjoyment of the Demised Premises shall be substantially impeded, whether or not the Demised Premises shall be damaged, and the Estimated Landlord Restoration Period (with such period to commence on the occurrence of such damage) exceeds the shorter of (x) 32 months and (y) the Expiration Date of the Term of this Lease,

then and in any such event Landlord (in the case of (1)), or Tenant or Landlord (in the case of (2)) shall have the right to terminate this Lease by notice to Tenant or Landlord, as the case may be, given within thirty (30) days of the receipt of contractor's estimate provided pursuant to Section B above. If Landlord or Tenant shall give notice of termination pursuant to this Section C, the Term shall expire by lapse of time upon the date which is thirty (30) days after such notice is given and Tenant shall vacate the Demised Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions provided for in this paragraph, Tenant's liability for rent shall cease as of the later of the expiration of the thirty (30) day notice period or the date of Tenant's vacation of the Demised Premises. Tenant hereby expressly waives the provisions of Section 227 of the New York Real Property Law or any like law which may hereafter be enacted and agrees that the foregoing provisions of this Article shall govern and control in lieu thereof, this Article being an express agreement governing any case of damage or destruction of the Demised Premises by fire or other casualty.

Notwithstanding the foregoing, the election by Landlord to terminate the Lease in accordance with this Section C shall not be construed as a waiver of Landlord's rights to any insurance proceeds payable as a result of said fire or casualty from any policy of insurance carried by Tenant and covering the Demised Premises and its contents.

(3) As used herein,

(a) the term "Estimated Tenant Restoration Period" shall mean such time as is equal to the sum of Tenant's contractor's estimate of (i) the number of months required to obtain all applicable governmental permits and approvals necessary for the repair of the damaged portion of the Demised Premises, and (b) the number of months required to repair or restore the Demised Premises to such condition as to render them tenantable by Tenant under a normal working schedule; and

(b) the term "Estimated Landlord Restoration Period" shall mean such time as is equal to the sum of Landlord's contractor's estimate of (i) the number of months required to obtain all applicable governmental permits and approvals necessary for the repair of the damaged portion of the

Building's structure or basic systems, and (ii) the number of months required to repair or restore the Building structure or basic systems, under a normal working schedule, to such condition that Tenant's access to and use and enjoyment of the Demised Premises is unimpeded.

D. In the event that neither Landlord nor Tenant exercises the right to terminate this Lease in accordance with the provisions of Section B, then:

(1) Landlord shall be responsible for restoration of the Building core and shell (if applicable), and Tenant shall be responsible for restoration of the Demised Premises.

(2) If the damage is to both the Building core and shell and the Demised Premises, then the required restoration periods shall run sequentially, for a maximum total of fifty-one (51) months. The restoration periods, as such may be extended pursuant to the terms of this section 14, shall not operate to extend the term of the Lease as set forth in Section 2 herein.

(3) If such damage is to the Building (whether or not there is also damage to the Demised Premises), and the damage to the Building is not repaired by Landlord within the Estimated Landlord Restoration Period (such period, for purposes of this Section (D), being referred to as the "Landlord Restoration Period"), then the Landlord Restoration Period shall be extended for up to an additional six (6) months (the "Extended Landlord Restoration Period"), provided that the Extended Landlord Restoration Period does not extend beyond the end of the Lease Term and provided that, during the Extended Landlord Restoration Period, Tenant shall receive a credit against its rent obligations in the amount of fifty per cent (50%) of the Base Rent for each month following the expiration of the Landlord Restoration Period until the repair of the Building core and shell is substantially complete.

In the event that Landlord has not completed the repair of the Building core and shell prior to the expiration of the Extended Landlord Restoration Period, then Tenant shall have the following options, to be exercised in writing within ten (10) days of the Expiration of the Extended Landlord Restoration Period:

(i) to further extend the Extended Landlord Restoration Period and receive the fifty percent (50%) rent credit as provided in this Section D; or

(ii) to give to Landlord, within ten (10) days following the expiration of the Extended Landlord Restoration Period, a five (5) days' notice of termination of this Lease.

Notwithstanding anything herein to the contrary, for purposes of this Section 14 (D), Landlord's repairs shall be deemed substantially complete if and only if the terms and conditions of any governmental approvals or permits required of Landlord for the performance of said repairs are not such as to impede in any manner the permitting or performance of the repairs (if any) required to be made by Tenant to the Demised Premises.

(4) If such damage is to the Demised Premises (whether or not there is also damage to the Building), and the damage to the Demised Premises is not repaired by Tenant within the Estimated Tenant Restoration Period (such period, for purposes of this Section (D), being referred to as the "Tenant Restoration Period"), then the Tenant Restoration Period shall be extended for up to an additional six (6) months (the "Extended Tenant Restoration Period"), provided that the Extended Tenant Restoration Period does not extend beyond the end of the Lease Term and provided that, during the Extended Tenant Restoration Period, Tenant shall pay a penalty over and above its rent obligations equal to fifty percent (50%) of the monthly base rent then applicable for each month following the expiration of the Tenant Restoration Period until the repair to the Demised Premises is substantially complete.

In the event that Tenant has not completed the repair of the Demised Premises prior to the expiration of the Extended Tenant Restoration Period, then Landlord shall have the following options, to be exercised in writing within ten (10) days of the expiration of the Extended Tenant Restoration Period:

(i) to further extend the Extended Tenant Restoration Period and receive the fifty percent (50%) rent penalty as provided in this Section D; or

(ii) to give to Tenant within ten (10) days following the expiration of the Tenant Restoration Period a five (5) days' notice of termination of this Lease.

E. No damages, compensation or claims shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Demised Premises or the Building.

F. Tenant acknowledges that Landlord will not carry business interruption insurance for Tenant's benefit or insurance of any kind on Tenant's furniture, furnishings, finishes or wall coverings and/or fixtures, equipment, and improvements including Tenant's Work, and agrees that Landlord shall not be obligated to repair any damage thereto or to replace the same.

15. Eminent Domain:

(A) If the whole of the Demised Premises, or a material portion, rendering the balance of the Demised Premises functionally unusable for its original intended purposes as set forth on Exhibit C shall be acquired or condemned by eminent domain for any public or quasi public use or purpose (a "Major Taking"), then and in that event, the Term of this Lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said Lease. Whether the condemning authority is taking all or a part of the Demised Premises, Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's leasehold estate, improvements, moving expenses and personal property, trade fixtures and equipment and loss of business, provided Tenant is entitled pursuant to the terms of the Lease to remove such property, trade fixtures and equipment at the end of the Term.

(B) If less than a material portion of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi public use, such that (1) at least eighty-five per cent (85%) of the gross square footage of the Demised Premises remains usable, and (2) such taking does not materially impact the operation of Tenant's business in the Demised Premises, as set forth in its Use Program, the Term of this Lease shall continue as to the portion of the Premises remaining without abatement of the Base or Percentage Rent, or the Capital Reimbursement (as hereinafter defined in Section 38 (B), or any diminution of any of Tenant's obligations hereunder. Tenant, whether or not the award or awards, if any, shall be sufficient for the purpose shall (subject to Unavoidable Delays, as defined in Article 40 hereof) proceed diligently to restore any remaining part of the Premises not so taken so that the latter shall be a complete, operable, self-contained architectural unit in good condition and repair, in conformity with the Construction Documents to the extent feasible. Such restoration shall be done in accordance with and subject to the provisions of Article 14 (B).

16. Assignment and Sublease; Leasehold Mortgage.

(A) Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign this Lease, nor underlet (such underletting, a "Sublease," and the party in occupancy thereunder, a "Subtenant") or suffer or permit the Demised Premises or any part thereof to be used by others, without the prior written consent of Landlord in each instance, which consent may be denied by Landlord in its sole discretion. For purposes of this Article 16, in addition to the direct assignment of Tenant's interest in this Lease, the following transactions shall be deemed to constitute an assignment hereunder (it being understood that, (x) if Tenant is a limited liability company ("LLC") rather than a "C" corporation, each reference to "Common Stock," in the descriptions of the transactions hereinafter enumerated, shall be deemed to refer to an ownership interest in such LLC, and (y) if Tenant is a partnership, then transactions having a similar effect, in Landlord's reasonable judgment, as those hereinafter enumerated shall also be deemed to constitute an assignment): (i) the sale, assignment, transfer, pledge or encumbrance, whether by operation of law or otherwise, of any of Tenant's issued or outstanding Common Stock, or the issuance of any additional Common Stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) if the issuance of such additional stock (or such other securities, when exercised or converted into

stock), would result in a change of the controlling stock ownership of Tenant as held by the shareholders thereof as of the Effective Date, as listed on Exhibit G annexed hereto, (ii) any merger or consolidation of Tenant in which Tenant is not the continuing or surviving corporation or pursuant to which shares of Tenant's Common Stock would be converted into cash, securities or other property, other than a merger of Tenant in which the holders of Tenant's Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation immediately after the merger, (iii) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, the assets of Tenant, or the liquidation or dissolution of Tenant, or (iv) individuals who would constitute a majority of the members of the Board elected at any meeting of stockholders or by written consent shall be elected to the Board and the election or the nomination for election by the stockholders of such directors was not approved by a vote of at least two-thirds of the directors in office immediately prior to such election.

(B) Notwithstanding anything herein to the contrary, the transactions listed below shall be permitted without Landlord's consent:

(1) The merger or consolidation of Tenant with or into another entity, provided that (a) Landlord is given at least thirty (30) days prior notice of the closing of any such transaction, (b) Tenant delivers to Landlord, with said notice, (i) copies of the results of the Vendex search regarding, and of the Vendor Responsibility Questionnaire completed by, the proposed successor, with the results being satisfactory to Landlord, and (ii) documentation, satisfactory to Landlord, and certified by Tenant's managing member, is delivered to Landlord, indicating that the net worth of the successor will be greater than the net present value of the Base Rent payments remaining to be paid hereunder, pursuant to Article 3 (A) hereof, from and after the date of the merger, discounted at the rate of three (3%) per cent per annum

(2) The assignment or this Lease, or the subletting of the Demised Premises or a portion thereof, to an entity controlled by one or more of the members of Tenant as of the Effective Date, as shown on Exhibit G hereto, provided that, (a) at least thirty (30) days before the closing date of the proposed transaction, a list of the members, stockholders or partners (as applicable) of such assignee or sublessee, certified by the chief executive or chief financial officer of said entity, is delivered to Landlord and demonstrates, to Landlord's satisfaction, that said entity is controlled by the persons comprising Tenant as of the Effective Date, and (b) the successor entity meets the requirements set forth in subsection (B) (1), above.

(3) The transfer of membership interests to family members of the members as of the Effective date, for estate planning purposes, provided that, at least thirty (30) days before the closing of said transaction, Tenant's managing member delivers to Landlord a certificate (i) listing the transactions that are to occur, (ii) the names of the family members involved, and (iii) their relationship to the transferring member.

(C) If this Lease be assigned, or if the Demised Premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of the covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or underletting.

(D) If Landlord consents to any of the foregoing occurrences or transactions listed in subsection (A), above, all assignees, transferees, and Subtenants and their subsequent assignees shall be subject to the Vendex and other due diligence requirements applicable to Landlord's procurement procedures, including but not limited to the completion of a Vendor Responsibility Questionnaire, and other required forms. Landlord may impose any conditions to its consent that BPCA determines, in its sole reasonable discretion, may be necessary or appropriate, including, without limitation, requiring that any person that is

a pledgee, transferee, assignee or Subtenant of Tenant, or that occupies or makes use of the Demised Premises, or that merges or consolidates with Tenant, or that acquires all or substantially all of the assets of Tenant, assume, perform and observe each and every term, covenant and condition on the part of Tenant to be performed or observed under this Lease and make all representations and warranties made by Tenant hereunder.

(E) Any Sublease shall be for one or more of the uses set forth in Article 23 of the City Lease, and shall include the following provisions, pursuant to Section 10.03 (c) of the City Lease:

(1) the Sublease is subordinate and subject to this Operator's Lease;

(2) except for security deposits and any other amounts deposited with Landlord hereunder in connection with the payment of insurance premiums, assessments and other similar charges or expenses, the Subtenant shall not pay rent or other sums payable under the Sublease to Landlord hereunder for more than two (2) months in advance (unless the City gives its consent to a period of three (3) months, which consent will not be unreasonably withheld);

(3) at the City's option, on the termination of the City Lease pursuant to Article 24 thereof, the Subtenant shall attorn to, or shall enter into a direct lease with, the City on terms identical to its Sublease with Landlord for the balance of the unexpired term of the Sublease;

(4) Subtenant shall maintain full and accurate books of account and records of Subtenant's business operation or enterprise, which books and records shall be so kept and maintained for at least six (6) years after the end of the relevant fiscal period of Subtenant; and

(5) Subtenant shall comply with the applicable requirements of Article 21 of the City Lease;

(6) Subtenant shall comply with all Requirements (as said term is defined in the City Lease); and .

(7) Subtenant shall not violate this Lease or the Ground Lease.

(F) [intentionally omitted]

(G) Tenant shall, upon demand, reimburse Landlord for its reasonable out-of-pocket costs and expenses incurred in connection with its review of the request for a proposed Sublease, and the associated documentation.

(H) Leasehold Mortgages

(1) Tenant shall have the right, at any time and from time to time during the Term, to mortgage the leasehold estate created hereby to an Institutional Lender (as hereinafter defined) for the purpose of obtaining financing related to Tenant's Work or other Alterations permitted to be made by Tenant hereunder (collectively, "Tenant Improvements"). Notwithstanding the foregoing, no Mortgage (as hereinafter defined) shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of the City or the Landlord in the Demised Premises or any part thereof. "Institutional Lender" shall mean an affiliate of the New York City Regional Center or another lender authorized to make EB 5 loans for the Tenant Improvements, a savings and loan association, a savings bank, a commercial bank or trust company, whether acting for itself or in a representative capacity for an institution encompassed within this definition, an insurance company, whether acting for itself or in a representative capacity for an institution encompassed within this definition, a real estate investment trust sponsored by an entity which qualifies as an Institutional Lender, an educational, religious or charitable institution, an endowment fund, a state, municipal or private employees' welfare, pension or retirement fund or system, or an investment banking firm or other financial institution. "Mortgage" means any mortgage or deed of trust that now or hereafter constitutes a lien on Tenant's interest in this Lease and the

leasehold estate created hereby.

(2) Mortgagee's Rights Not Greater than Tenant's. The execution and delivery of a Mortgage shall not give nor shall be deemed to give a Mortgagee any greater rights against Landlord or the City than those granted to Tenant hereunder.

(3) Application of Proceeds from Insurance or Condemnation Awards. To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Tenant Improvements, or the proceeds of an award paid in connection with a Taking referred to in Article 15 hereof, be applied to restore any portion of the Improvements, no Mortgagee shall have the right to apply the proceeds of insurance or such condemnation awards toward the payment of the sum secured by its Mortgage and Landlord shall not have the right to apply such proceeds on account of any Rental coming due hereunder unless and until the Tenant Improvements have been restored in accordance with this Lease.

(4) Notice to Leasehold Mortgagee.

(a) Landlord shall give to the Mortgagee (provided the Mortgagee shall have given to Landlord a notice specifying such holder's name and address at the address set forth in the aforesaid notice or at such other address as such holder thereafter notifies Landlord and otherwise in the manner provided by Article 31 hereof) a copy of each notice of (i) default by Tenant and (ii) termination of this Lease given to Tenant, at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to the Leasehold Mortgagee.

(b) If Landlord shall give any such notice: the Mortgagee shall thereupon have the right (except in respect of a default under Section 21 (B) hereof) to remedy any monetary or non-monetary default, as the case may be (collectively "default"), or to cause such default to be remedied, for a period of thirty (30) days more than is given Tenant hereunder to remedy such default or to cause such default to be remedied, and shall give notice to Landlord when the default is cured by Mortgagee or by a Person authorized by Mortgagee. Landlord will accept performance by the Mortgagee or affiliate of any covenant or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant. No such default by Tenant shall be deemed to exist as long as the Mortgagee or affiliate shall, in good faith, have commenced promptly to cure the claimed default or obtain possession of the Demised Premises and to prosecute the same to completion with diligence and to continue to pay Rent. In the event the default cannot be cured without Mortgagee's or its affiliate's first obtaining possession of the Demised Premises, the time in which the Mortgagee or its affiliate may have to cure such default shall be deemed extended to include the period of time required by said Mortgagee or its affiliates to obtain such possession with due diligence, provided, however, that during such period, all of the other obligations including monetary obligations of Tenant under this Lease, to the extent they are capable of being performed by the Mortgagee or its affiliates, are being performed.

(c) Nothing contained in this Section 16(H) shall require Landlord to give any such notice of default if such notice is not required to be given to Tenant by any provision of this Lease nor shall acceptance by Landlord of performance by the Mortgagee of any obligation of Tenant hereunder in and of itself constitute an acceptance by Landlord of the Mortgagee as assignee of this Lease and Lessee's Estate, and an assignment shall be effective only in accordance with the terms of this Lease.

(5) No Modification of Lease after Notice. From and after the date upon which the Mortgagee or its affiliates shall give Landlord the aforesaid notice provided for in this Article 16 (H), Landlord and Tenant will not (except in the case of a default under Section 21 (B) hereof) cancel, surrender, modify or amend this Lease, and Tenant shall not voluntarily waive any of its rights hereunder by its affirmative act, in any respect without the prior written consent of the Leasehold Mortgagee or its affiliates and no Mortgagee or its affiliates shall be bound by any such cancellation, surrender, modification or amendment. No Mortgagee or its affiliates shall become liable under the provisions of this

Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of Tenant's Estate. If any Mortgagee or its affiliates shall acquire Tenant's Estate as a result of a sale under such Mortgage pursuant to a judgment of foreclosure and sale, or through any transfer in lieu of foreclosure, or through settlement of, or arising out of, any pending or contemplated foreclosure action, such Mortgagee or its affiliates shall have the privilege of transferring Tenant's Estate without the prior consent of Landlord, provided, however, that there shall be full compliance with the provisions of Article 51 hereof [Note: cross-reference makes no sense – Article 51 is intentionally omitted], whereupon such Mortgagee or its affiliates shall be relieved of any further liability under this Lease from and after such transfer. Tenant agrees that no sale to it of any part or all of the Landlord's Fee Estate shall terminate or extinguish this lease by merger and that this Lease will not merge if an interest in Tenant's Estate is acquired by Landlord.

(6) New Lease with Leasehold Mortgagee.

(a) In case of termination of this Lease by reason of any Event of Default of Tenant or for any other reason, Landlord shall give notice thereof to the Mortgagee who shall have given Landlord a notice as provided in this Article 16(H), Landlord and such Mortgagee (or its designee or nominee), on written request of such Mortgagee (or its designee or nominee) made any time within thirty (30) days after the giving of such notice by Landlord, shall cooperate to remove Tenant from the Premises and subject to compliance with the provisions of Article 16(H) shall execute and deliver to each other a new lease of the Premises for the remainder of the Term of this Lease, upon all the same terms, covenants, conditions, limitations and agreements herein contained, except that (i) the date of commencement of the term of such new lease shall be the date on which such new lease is executed and delivered and the Expiration Date shall remain unchanged, and (ii) such Mortgagee (or its designee or nominee) shall pay to Landlord, simultaneously with the delivery of such new lease, all unpaid Rent due under this Lease up to and including the date of the commencement of the term of such new lease less the amount of all sums received by Landlord from any Subtenants, in which event Landlord acknowledges that such Mortgagee shall be subrogated to the rights of Landlord with respect to all unpaid Rent due hereunder and Landlord shall assign its interests in any such claims for unpaid Rent to such Leasehold Mortgagee or its affiliates in a form of assignment reasonably satisfactory to such Mortgagee. Any funds then on deposit or to be deposited with the Landlord at the commencement of the term of the new lease shall continue to be held as though the same were deposited pursuant to the new lease. Subject to the provisions of this Article 16(H), any such new lease and the leasehold estate thereby created shall, subject to the same conditions as contained in this Lease and without limiting the generality of the provisions of this Article 16(H), continue to maintain the same priority as this Lease with regard to any lien or encumbrance on Landlord's Estate created subsequent to the date hereof except for any such lien or encumbrance resulting from any Default of Tenant or created with the consent of such Mortgagee or created prior to the making of such Mortgagee's mortgage.

(b) Upon the execution and delivery of a new lease under this Article 16(H), all subleases which theretofore may have been assigned to Landlord thereupon shall be assigned and transferred, without recourse, by Landlord to tenant named in such new lease. Between the date of termination of this Lease and the date of execution and delivery of the new lease, if the Mortgagee shall have requested such new lease, Landlord will not cancel any subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the consent of the Leasehold Mortgagee. In the event that a default by a Subtenant shall exist, the Mortgagee shall not unreasonably withhold or delay consent to such termination.

(7) Permitted Assignments by Mortgagee. No assignment of this Lease or subletting of the entire Premises or substantially the entire Premises, permitted pursuant to this Article 16(H), shall be effective for any purpose unless and until there shall have been delivered to Landlord:

(a) an executed counterpart of the instrument of assignment or subletting;
and

(b) in the case of either an assignment or sublease, an executed instrument of assumption by said assignee or sublessee, whereby the assignee or sublessee agrees to assume, perform and observe all of the terms, covenants, conditions and obligations to be performed and observed by Tenant hereunder from and after the effective date of such assignment (except that in the case of a collateral assignment of the Lease or subleases in connection with a Mortgage, it is acknowledged that such assumption by the assignee shall not be a present assumption). Mortgagee shall not be required to assume the obligations of Tenant under the Lease until the Mortgagee takes title to such Leasehold Estate.

(8) Landlord and Tenant Cooperation. Landlord and Tenant shall both cooperate in amending the Lease for the purpose of implementing or clarifying the provisions of the Lease to protect the interest of the Mortgagee, so long as such amendments do not in any way adversely affect the interests of Landlord hereunder.

(9) Statutory liens. If Landlord shall now or hereafter be entitled to claim benefits of any statutory landlord lien on personal property of Tenant or any Subtenant, such lien shall be subject to and subordinate to lien of the Mortgage.

(10) Mortgagee's Rights in Landlord's Bankruptcy. If Landlord's obligations under this Lease are rejected or disaffirmed in a bankruptcy proceeding initiated by or brought against Landlord, Mortgagee shall have the right to exercise any remedies or prerogatives of Tenant arising under the Bankruptcy Code to the extent set forth in the Mortgage.

(11) Mortgagee as Third Party Beneficiary. Mortgagee shall be a third party beneficiary of provisions of the Lease which relate to the Mortgage.

17. [intentionally omitted]

18. Electric Current:

Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of the feeders to the Building, or the risers or wiring installation, which are to be installed by Landlord as part of Landlord's Work, pursuant to Exhibit D hereto, and Tenant may not use any electrical equipment which, in Landlord's opinion, reasonably exercised, will overload such installations. The change at any time of the character of electric service shall in no way make Landlord liable or responsible to Tenant, for any loss, damage or expenses which Tenant may sustain.

19. Access to Demised Premises:

(A) Landlord or Landlord's agents shall have the right (but shall not be obligated) to enter the Demised Premises in any emergency at any time, and, at other reasonable times, upon reasonable prior notice, to examine the same and to make such repairs, replacements and improvements as Landlord may deem reasonably necessary and reasonably desirable to any portion of the Building or which Landlord may elect to perform in the Demised Premises following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this Lease, or for the purpose of complying with Requirements. Tenant shall permit Landlord to use and maintain and replace pipes and conduits in and through the Demised Premises and to erect new pipes, ducts, and conduits therein, provided, they are concealed within the walls, floors, or ceiling, wherever practicable. Landlord may, during the progress of any work in the Demised Premises, take all reasonably necessary materials and equipment into said Premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise provided that Landlord shall store said materials in such location as is reasonably acceptable to Tenant and Landlord shall diligently proceed to perform such repairs or perform such alterations and shall use all reasonable efforts to minimize interference with Tenant's business operations.

(B) Throughout the Term hereof Landlord shall have the right to enter the Demised Premises during normal business hours and on prior reasonable notice for the purpose of showing the same to prospective purchasers or mortgagees of the Building, and during the last twelve months of the Term for the purpose of showing the same to prospective tenants.

20. Bankruptcy:

(A) Anything elsewhere in this Lease to the contrary notwithstanding, this Lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy (whether voluntary or involuntary) or under the laws of any state naming Tenant (or a guarantor of any of Tenant's obligations under this Lease) as the debtor; (2) the filing of a petition by Tenant for reorganization under Chapter 11 of the United States Bankruptcy Code, (3) the making by Tenant (or a guarantor of any of Tenant's obligations under this Lease) of an assignment or any other arrangements for the benefit of creditors under any state statute, or (4) the insolvency of Tenant. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the Demised Premises but shall forthwith quit and surrender the demised premises. If this Lease shall be assigned in accordance with its terms, the provisions of this Article 20 shall be applicable only to the party then owning Tenant's interest in this Lease.

(B) In the event of the termination of this Lease pursuant to subsection (A), above, Landlord shall forthwith, (notwithstanding any other provisions of this Lease to the contrary) be entitled to recover from Tenant as and for liquidated damages an amount equal to the amount by which the rent reserved for the unexpired portion of the Term exceeds the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the Demised Premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of three percent (3%) per annum. If the Demised Premises or any part thereof be relet by the Landlord for the unexpired term of the Lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Demised premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Landlord to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

21. Default:

(A) If Tenant

(1) defaults in fulfilling any of the covenants of this Lease (other than the covenant to pay Rent), including, but not limited to, (x) the covenant to commence Tenant's Work, pursuant to Article 36 (G) hereof, within thirty (30) days after the Commencement Date, or (y) the covenant to complete said Work (subject only to punchlist items), pursuant to said Article 36 (G), within three hundred (300) days after the Commencement Date (in the case of (x) or (y), as applicable, subject to Unavoidable Delays and/or governmental delays in issuing permits necessary to commence Tenant's Work); or

(2) if the Demised Premises, or any material or prominent portion thereof, becomes vacant or deserted (excluding periods for alterations or holidays or vacation); or

(3) if any execution or attachment shall be issued against Tenant or any of Tenant's property, whereupon the Demised Premises shall be taken or occupied by someone other than Tenant; or

(4) if this Lease be rejected under §365 of Title 11 of the U.S. Code (Bankruptcy Code);

or

(5) if Tenant shall fail to move into or take possession of the Demised Premises within thirty (30) days after the Commencement Date, of which fact Landlord shall be the sole judge (provided that the commencement of Tenant's Work by Tenant shall be deemed to constitute taking possession);

then, in any one or more of such events, upon Landlord serving a thirty (30) day notice upon Tenant specifying the nature of said default, and upon the expiration of said thirty (30) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said thirty (30) day period, and if Tenant shall not have diligently commenced curing such default within such thirty (30) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then an Event of Default shall be deemed to have occurred hereunder, and Landlord may serve a five (5) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days this Lease and the Term hereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this Lease and the Term thereof and Tenant shall then quit and surrender the Demised Premises to Landlord but Tenant shall remain liable as hereinafter provided.

(B) Tenant shall make its best efforts to obtain all governmental approvals and permits required for construction and operation of the Demised Premises in accordance with Tenant's Use Program for the Demised Premises (including, but not limited to, a permit from the NYSDEC for the Use and Protection of Waters, and/or such other permit(s) as may be required for Tenant's change of use of the Demised Premises), with the cooperation and assistance of Landlord as provided in Section 36 (C) hereof. If, however, for any reason (including, but not limited to, Unavoidable Delays), despite Tenant's best efforts, any necessary permit, from the NYSDEC, has not been obtained within twenty-four (24) months after the Effective Date in a form which, if containing conditions, is acceptable to both Landlord and Tenant, then either Landlord or Tenant shall have the right at any time thereafter, upon thirty (30) days notice, to terminate this Lease; provided, however, that if, within said thirty day notice period, the permit(s) pertaining to Tenant's change of use have been delivered, then the notice of termination shall be deemed null and void. If the notice of termination remains effective, then at the end of said thirty (30) day period, an Event of Default shall be deemed to have occurred hereunder, and the party (i.e., either Landlord or Tenant) who shall have served the original notice of termination, may serve a five (5) days' notice of cancellation of this Lease upon the other party, and Tenant, and upon the expiration of said five (5) days this Lease and the Term hereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this Lease and the Term thereof and Tenant shall then quit and surrender the Demised Premises to Landlord but Tenant shall remain liable as hereinafter provided. Upon Tenant's surrender of the Demised Premises, Landlord shall return any portion of the Security or the Construction Escrow then being held by Landlord (subject, as to the Security, to Landlord's rights to retain all or any portion of the Security pursuant to Section 47 (A) (1) hereof, except if such rights would arise due to the occurrence of an Event of Default under this Section 21 (B)).

(C) (1) It shall be a non-curable Event of Default under this Lease if Tenant (a) fails to submit to BPCA, no later than twenty (20) days after the Effective Date, reasonably adequate proof (including, but not limited to, pertinent financial statements as of the most recent practicable date) that Tenant has sufficient financial capacity to fund Tenant's Work, it being understood that (i) if Landlord deems such information to be inadequate, it shall specify said inadequacies within three (3) Business Days after receipt of such information, (ii) Tenant shall remedy any such deficiencies within three (3) Business Days thereafter, and (iii) if Tenant fails to remedy any such inadequacies in a timely manner, then a non-curable Event of Default shall be deemed to have occurred hereunder, or (b) fails to submit to Landlord, no later than thirty (30) days prior to the commencement of Tenant's Work, pursuant to Section 36 (E) hereof, reasonably acceptable documentation of the financing, equity and/or other funding arrangements that Tenant has made in order to obtain funds which are sufficient for the cost of performance of Tenant's Work, as said cost is reflected in the budget required to accompany the Construction Documents pursuant to Section 36 (D) (5), or (c) fails to implement one or more Key Elements (as hereinafter defined) of the Use Program for the Demised Premises set forth on Exhibit C within three hundred sixty-

five (365) days after the Commencement Date, or (d) discontinues one or more of such Key Elements at any time without prior written consent by BPCA, which consent shall be in the sole discretion of BPCA, for a period of more than thirty (30) consecutive days, or for more than sixty (60) days (whether or not consecutive) in any one hundred eighty (180) day period, or (e) changes the nature, size, location or operator of one or more Key Elements of said Program without the prior written consent of Landlord which consent shall not be unreasonably withheld. Tenant acknowledges and agrees that its Use program for the Demised Premises is exclusively limited to the uses set forth in Exhibit C. As used herein, the term "Key Element" means any single program element or combination of program elements, the operation of which in total involves more than twenty-five per cent (25%) of the gross square footage of the first or second floor of the Building.

(2) If a default has occurred under this subsection (C), Landlord shall have the right to terminate this Lease provided Landlord shall deliver to Tenant thirty (30) days prior notice to Tenant setting forth in specific detail the nature of the default under this section, and the Term hereunder shall end and expire as fully and completely as if the expiration of such thirty (30) day period were the day herein definitely fixed for the end and expiration of this Lease and the Term thereof and Tenant shall then quit and surrender the Demised Premises to Landlord but Tenant shall remain liable as hereinafter provided.

(D) If (1) an Event of Default described in subsection (A) or (C), above, shall have occurred, and the Term shall expire as aforesaid, or (2) Tenant shall make default in the payment of the Rent reserved or any part thereof or in making any other payment herein required; and such default shall continue for a period of five (5) days after notice thereof shall have been served by Landlord upon Tenant (with the continuance of such payment default for such period after notice being deemed to constitute an Event of Default hereunder), then and in any of such events Landlord may without notice, reenter the Demised Premises either by force or otherwise and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of the Demised Premises and remove their effects and hold the Premises as if this Lease had not been made, and Tenant hereby waives the service of notice of intention to reenter or to institute legal proceedings to that end.

(D) Notwithstanding any other provision of this Lease, if Tenant shall default in the performance of any term or condition of this Lease (other than the payment of Rent) more than four (4) times in any period of twelve (12) months, or, with respect to the payment of any item of Rent, more than three (3) times in any period of twelve (12) months (the fourth or third default, as the case may be, being referred to herein as the "Threshold Default"), and notwithstanding that such defaults shall have each been cured within the applicable period, as above provided, if any further similar default shall occur, then (provided that, within ten (10) days after the occurrence of a Threshold Default, Landlord shall have given notice to Tenant that said default constitutes a Threshold Default), Landlord may serve a written three (3) day notice of cancellation of this Lease upon Tenant, and upon the expiration of said three (3) days, this Lease and the Term hereunder shall end and expire as fully and completely as if the date of expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this Lease and the Term thereof and Tenant shall then quit and surrender the Demised Premises to Landlord but Tenant shall remain liable as hereinafter provided.

22. Remedies of Landlord and Waiver of Redemption:

In case of any such default, reentry, expiration and/or dispossess by summary proceedings or otherwise, of the type referenced in Article 21,

(A) the rent, and additional rent, shall become due thereupon and be paid up to the time of such reentry, dispossess and/or expiration,

(B) Landlord may re-let the Demised Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms, which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free rent or charge a higher or lower rental than that in this Lease and/or,

(C) Tenant or the legal representatives of Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the Term of this lease. The failure of Landlord to re-let the Demised Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Landlord may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the Demised Premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Landlord, in putting the Demised Premises in good order or preparing the same for re-rental may, at Landlord's option, make such alterations, repairs, replacements and/or decorations in the Demised Premises as Landlord, in Landlord's sole judgment, considers advisable and necessary for the purpose of re-letting the Demised Premises, and the making of such alterations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability.

(D) Landlord shall in no event be liable in any way whatsoever for failure to re-let the Demised Premises, or in the event that the Demised Premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder.

(E) In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy, shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

23. Fees and Expenses:

If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this Lease, after notice, and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this Lease, Landlord may, upon thirty (30) days notice to Tenant, at any time thereafter and without further notice perform the obligation of Tenant thereunder, and if Landlord, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any actions or proceeding, and prevails in any such action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Landlord within thirty (30) days of rendition of any bill or statement to Tenant therefore, and if Tenant's Lease Term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Landlord as damages. Notwithstanding the foregoing, in the event of an emergency, Landlord may take the aforesaid curative actions without notice to Tenant, or upon reasonable prior notice, depending upon the circumstances.

24. No Representations by Landlord:

(A) Except as set forth in Article 6(c) above, neither Landlord nor Landlord's agent have made any representations or promises with respect to the physical condition of the Building, the land and the pier upon which portions of the Building rest, or the Demised Premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the Demised Premises or the Building except

as herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease.

(B) Tenant has inspected the Building and the Demised Premises and is thoroughly acquainted with their condition and agrees to take the same "as is" on the date possession is tendered and acknowledges that the taking of possession of the Demised Premises by Tenant shall be conclusive evidence that the said Premises and the Building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects.

(C) All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Landlord and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

25. End of Term; Surrender:

(A) On the Expiration Date or upon the sooner termination of this Lease or upon any reentry by Landlord upon the Demised Premises, Tenant shall, at its sole cost and expense, quit, surrender, vacate and deliver the Demised Premises to Landlord "broom clean" and in good order, condition and repair except for ordinary wear, tear and damage by fire or other insured casualty, and Tenant shall remove all its property. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this Lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

(B) Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any similar or successor law then in force, in connection with any holdover proceedings which Landlord may institute to enforce the provisions of this Article.

(C) Tenant's obligations under this Article shall survive the expiration or sooner termination of this Lease.

26. Quiet Enjoyment:

Landlord covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this Lease, and to the City Lease.

27. Failure to Give Possession:

(A) If the Commencement Date has not occurred by the Scheduled Completion Date (as defined in Article 35, below), because Landlord's Work has not been Substantially Completed (as defined in said Section) by said date, or because of the fact that a certificate of occupancy has not been procured or for any other reason, Landlord shall not be subject to any liability for failure to give possession on the Scheduled Completion Date, and the validity of the Lease shall not be impaired under such circumstances, nor shall the same be construed in any way to extend the term of this Lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession or complete construction) until after Landlord shall have given Tenant written notice that the Landlord is able to deliver possession in the condition required by this Lease. The provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

(B) Notwithstanding anything to the contrary in this provision, if Substantial Completion of Landlord's Work is delayed beyond March 31, 2012 for reasons other than the performance of work

associated with the accommodation of Tenant's specific Use Program, then, beginning on the Rent Commencement Date, Tenant shall be entitled to a discount of \$12,000 per month in the amount of Base Rent owed under the terms of Article 3(A) hereof. If Substantial Completion of Landlord's Work is delayed beyond December 31, 2012 for reasons other than the performance of work associated with the accommodation of Tenant's specific Use Program, then Tenant shall be entitled to terminate the Lease upon written notice to Landlord.

28. No Waiver:

The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease or of any of the Rules or Regulations, set forth or hereafter adopted by Landlord, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of rent and/or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed in acceptance of a surrender of the Demised Premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or Landlord's agent shall have any power to accept the keys of the Demised Premises prior to the termination of the Lease, and the delivery of keys to any such agent or employee shall not operate as a termination of the Lease or a surrender of the Demised Premises.

29. Waiver of Trial by Jury:

It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of Demised Premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Landlord commences any proceeding or action for possession, including a summary proceeding for possession of the demised premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4, except for statutorily mandatory counterclaims.

30. [Intentionally Omitted]

31. Bills and Notices; Communications:

Except as otherwise in this Lease expressly provided, any notice, statement, demand or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this Lease or pursuant to any applicable Requirement (collectively, a "Notice") shall be in writing (whether or not so stated elsewhere in this Lease), and shall be effective for any purpose if given or served as follows:

(A) If by BPCA, by an overnight delivery service which obtains receipts, or by facsimile transmission or e-mail, to the attention of Paul Lamas, at FP Enterprises, LLC, 93 Pearl Street, New York, New York, or at facsimile number (212) 269-5928, or e-mail address paul@financierpastries.com; and to the attention of Drew Spitler, at c/o The Dermot Company, Inc. 729 Seventh Avenue, New York, New York 10019, facsimile number (917) 591-7386 or e-mail address dspitler@dermotcompany.com; with a copy, sent by an overnight delivery service which obtains receipts, or by facsimile transmission or email, to the attention of Steven P. Polivy, Esq., at Akerman Senterfitt LLP, 335 Madison Avenue, New York,

New York 10017, facsimile number (212) 880-8965, or e-mail address steven.polivy@akerman.com (or in each case at such other street address, facsimile number or e-mail address (as applicable) as Tenant may from time to time designate by notice to BPCA as aforesaid).

(B) If by Tenant, by an overnight delivery service which obtains receipts, or by facsimile transmission or e-mail, to Battery Park City Authority, One World Financial Center, 200 Liberty Street (24th floor), New York, New York 10281, Attention: President, or at facsimile number 212-417-4153, or email address gayle.horwitz@batteryparkcity.org, with a copy, sent by an overnight delivery service which obtains receipts, or by facsimile transmission or email, to the attention of General Counsel, at the same street address, or at facsimile number 212-417-4123 or 212-417-4214, or at email address phyllis.taylor@batteryparkcity.org. (or in each case at such other street address, facsimile number or e-mail address (as applicable) as BPCA may from time to time designate by notice to Tenant as aforesaid).

(C) Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served (i) if given by overnight delivery service, on the date of the receipt, (ii) if given by facsimile transmission, upon generation of a "successful transmission" notice by the sender's facsimile machine, or (iii) if given by e-mail, twenty-four (24) hours after the e-mail is sent, unless within said period the sender receives notice, generated by the e-mail communications system used by the sender, that the transmission was unsuccessful.

(D) Notwithstanding anything to the contrary in this Lease, if notice is to be given to the City pursuant to any provision hereof, said notice shall be given by hand with proof of delivery, by delivery by an overnight courier service which obtains receipts, or by mailing the same to the City Landlord by express or certified mail, postage prepaid, return receipt requested, addressed to

The City of New York
c/o New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: President

with a copy to

The City of New York
c/o New York City Economic
Development Corporation
110 William Street
New York, New York 10038
Attention: General Counsel

and one to

The New York City Law Department
100 Church Street
New York, New York 10007
Attn.: Chief, Economic Development Division

or to such other addresses and attorneys as Landlord may from time to time designate in the manner set forth above.

32. Water and Sewer Charges:

(A) Because the nature of Tenant's Use Program, Tenant requires that Tenant use or consume water for purposes in addition to ordinary lavatory purposes, Landlord shall install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Landlord for the cost of

the meter and the cost of the installation thereof, and throughout the Term Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter, as and when bills are rendered.

(B) Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy, or charge which, on or after the Commencement Date, is assessed, imposed or a lien upon the Demised Premises or the Pier A Property pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Landlord shall be payable by Tenant as additional rent.

33. Sprinklers:

Anything elsewhere in this Lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government (collectively, the "Fire Authorities") require or recommend the installation of a new or additional sprinkler system, or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the Demised Premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Fire Authority or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or nonstructural in nature.

34. Insurance:

(A) Throughout the period of performance by Tenant of any Alterations (as hereinabove defined), including, but not limited to Tenant's Work, Tenant shall secure and keep in full force and effect the following insurance coverages:

(1) Builder's Risk Insurance (standard "All Risk" property damage or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value (non-reporting) basis, for property damage protecting Tenant, Landlord, the City, the New York City Economic Development Corporation (the "NYCEDC"), Apple Development Corp. ("EDC's Agent") and the general contractor against all insurable legal liability claims resulting from any work being performed on the Demised Premises.

(2) Commercial General Liability Insurance in an amount to be approved by the City and Landlord prior to the commencement of Alterations, but in no event less than \$10,000,000 in the aggregate. Such insurance shall be written on an occurrence basis with respect to the Demised Premises, with deductibles of not more than \$25,000 per loss, protecting against liability for bodily injury, death, property damage, and personal injury. Such insurance shall contain no exclusions beyond those provided in Form ISO CG 0001 unless specifically approved in each instance by the City and Landlord, which approval will not be unreasonably withheld or delayed.

(3) Workers Compensation and Employers Liability coverage, in each case in statutory amounts,

(B) From and after the date of the commencement of Tenant's business operations at the Demised Premises, Tenant shall secure and keep in full force and effect the following insurance coverages;

(1) Commercial general liability insurance in an amount to be approved by the City and Landlord prior to the commencement of Tenant's business operations, but in no event less than ten million dollars (\$10,000,000) in the aggregate. Such insurance shall be written on an occurrence basis

with respect to the Demised Premises and all operations related thereto, with deductibles of not more than \$25,000 per loss, protecting against liability for bodily injury, death, property damage, and personal injury. Such insurance shall contain no exclusions beyond those provided in Form ISO CG 0001 unless specifically approved in each instance by the City and Landlord, which approval will not be unreasonably withheld or delayed.

(2) Automobile Liability for a combined single limit per occurrence for bodily injury and property damage of not less than one million dollars (\$1,000,000).

(3) Statutory Worker's Compensation and Employer's Liability Insurance.

(4) Marine Protection and Indemnity Insurance, if applicable in light of the nature of the Tenant's business activities at the Demised Premises, in an amount not less than twenty million dollars (\$20,000,000), per occurrence.

(5) Liquor Law Liability and Host Liquor Law Liability, if applicable in light of the nature of Tenant's business activities at the Demised Premises, in an amount not less than five million dollars (\$5,000,000), in the aggregate.

(6) Such other insurance in such amounts as from time to time reasonably may be required by the City or Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated to the Demised Premises or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by Tenant at the Demised Premises.

(C) With regard to the insurance policies referenced in subsections (A) and (B), above,

(1) Said insurance policies shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A:VII" or better or another comparable rating reasonably acceptable to the City and Landlord considering market conditions.

(2) All references to forms and coverages shall be those used by the Insurance Services Office of New York or equivalent forms satisfactory to the City, Landlord and Tenant in all material respects.

(3) Certificates of insurance evidencing the issuance of all such insurance, describing the coverage and guaranteeing thirty (30) days' prior notice to Landlord by the insurance company of cancellation or non-renewal, shall have been delivered to Landlord (a) with respect to the insurance required for Alterations, at least one week prior to the commencement of said Alterations, and (b) with respect to the insurance required for Tenant's business operations, by no later than one week prior to the commencement of said operation. In the case of any policies replacing or renewing any policies expiring during the Term, said certificates shall be delivered, not later than thirty (30) days before the expiration dates of any expiring policies.

(4) The certificates of insurance shall be issued by the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance shall also deliver to Landlord, together with the certificates, proof reasonably satisfactory to Landlord that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. Upon request, Tenant shall deliver a copy of each entire original policy, or other evidence satisfactory to Landlord of the validity and accuracy of said certificate, immediately after the date each such policy is available, but no later than four (4) months after the date each such policy takes effect.

(5) Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies.

(6) Each policy of insurance required to be carried pursuant to the provisions of this Article shall contain (i) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by BPCA, the City, EDC's Agent, and/or the NYCEDC, other than those acts which are committed by BPCA, the City, EDC's Agent and/or the NYCEDC, respectively, (ii) a written waiver of the right to subrogation with respect to all of the named insureds and additional insureds, including BPCA, the City, EDC's Agent and the NYCEDC, (iii) a clause designating BPCA, the City, EDC's Agent and the NYCEDC as loss payee or additional insured, as their interests may appear (other than for the Workers Compensation and Employers Liability policies), and (iv) an agreement by the insurer that such policy shall not be cancelled, modified, or denied renewal without at least thirty (30) days' prior written notice to BPCA, the City, EDC's Agent and the NYCEDC, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

(D) In the event that Tenant enters into a Sublease permitted by Section 16, above, Tenant shall cause Subtenant to obtain insurance policies for all coverages listed in subsections (A) and/ or (B) of this Article 34 as are deemed applicable by Landlord, in its sole discretion. Landlord shall advise Tenant of the coverages required from Subtenant in Landlord's notice consenting to the Sublease. Said policies shall be subject to the requirements of subsection (C), and Tenant shall obtain certificates of insurance from the Subtenant meeting such requirements, and shall deliver copies of same to Landlord.

35. Landlord's Work:

(A) By no later than January 31, 2012, as such date may, at Landlord's request, be extended for Unavoidable Delays, as defined in Article 40 hereof (such date, as the same may be extended, the "Scheduled Completion Date"), or for delays in the issuance of any required governmental permits, Landlord shall have Substantially Completed the work to be performed by Landlord as described on Exhibit D annexed hereto ("Landlord's Work"). The term "Substantially Completed" is as defined in Section 2 (B), above.

(B) Notwithstanding anything to the contrary in this provision, if Substantial Completion of Landlord's Work is delayed beyond March 31, 2012 for reasons other than the performance of work associated with the accommodation of Tenant's specific use program, then, beginning on the Rent Commencement Date, Tenant shall be entitled to a discount of \$12,000 per month in the amount of base rent owed under the terms of Article 3(A) hereof. If Substantial Completion of Landlord's Work is delayed beyond December 31, 2012 for reasons other than the performance of work associated with the accommodation of Tenant's specific Use Program, then Tenant shall be entitled to terminate the Lease upon written notice to Landlord.

36. Tenant's Work:

(A) Tenant shall perform or cause to be performed the construction work required in connection with the fit-out of the Premises for Tenant's Use, as such work is described on Exhibit E annexed hereto ("Tenant's Work"). Tenant's Work shall comply with (i) all Requirements (as defined in Article 11, above), (ii) the Department of Buildings permits, and (iii) DCP requirements.

(B) Tenant has retained Rogers Marvel Architects ("RMA"), a licensed architect who has been approved by Landlord as part of the selection process, for design and filings of the Tenant's Work, and to oversee the entire construction process. Notwithstanding the foregoing, and subject to Landlord's reasonable approval, Tenant shall have the right to select an alternative licensed architect of its choosing if it so elects. RMA (or such alternative architect) shall prepare all of Tenant's plans and specifications for Tenant's Work which shall require prior approval from BPCA, at the pre-schematic, schematic, design development and construction document phases. Tenant and RMA (or such alternative architect) will be

required to ensure that all construction conforms to the plans approved by BPCA's Department of Planning and Design. RMA (or, if applicable, said alternate architect) is referred to herein as "Tenant's Architect."

(C) BPCA shall cooperate with the Tenant, at no cost to Tenant for BPCA's assistance, and shall submit applications under its name when appropriate, to obtain required approvals and permits, at the appropriate phases, of SHPO and NYSDEC for uses and activities within the Demised Premises or on the Pier A Property as approved by BPCA. The Tenant shall cooperate with BPCA in preparing required applications and supporting documentation and appearing at meetings and hearings, if scheduled, associated with obtaining any such required approvals and permits.

(D) Procedures for Submission of Tenant's Plans and Specifications

(1) Within thirty (30) days of the Effective Date of this Lease, Tenant shall submit to BPCA: preliminary scaled drawings of Tenant's Work (the "Pre-Schematics"). If Landlord determines that the Pre-Schematics (a) are consistent with the program of uses described in Tenant's response, dated February 16, 2010 ("Tenant's Response") to Landlord's Request for Proposals dated November 23, 2009, as supplemented and/or modified by Tenant's Supplemental Response, dated July 30, 2010, to Landlord's Request for Supplemental Information dated June 14, 2010, and as further supplemented by the additional information/clarification dated August 31, 2010, submitted by Tenant pursuant to Landlord's request therefor, dated August 24, 2010 (Tenant's Response, as so supplemented, being referred to herein as the "Final Response"), (b) would not require any changes in the final construction plans and specifications for Landlord's Work ("Landlord's Drawings," a copy which has been delivered to Tenant), other than such changes as may subsequently be mutually agreed upon during coordination sessions for Tenant's Work, (c) include detailed drawings showing Tenant's proposed "back of house" operations, accompanied by a written explanation, in each case acceptable to BPCA, and (e) qualify for a Silver rating under the criteria of the Leadership in Energy and Environmental Design Green Building Rating System for Commercial Users ("LEED-CI") developed by the U.S. Green Building Council, Landlord shall notify Tenant to that effect. Landlord represents that Landlord's Work shall qualify for Silver rating under LEED-CI as well. Items (a) through (e) are referred to collectively herein as the "Standards." If Landlord determines that the Pre-Schematics do not conform to the Standards, Landlord shall so notify Tenant, specifying in reasonable detail those respects in which the Pre-Schematics do not so conform, and Tenant shall revise the Pre-Schematics to so conform and shall resubmit the same to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the Pre-Schematics do not so conform or such longer period as Landlord in its reasonable judgment may approve. Each review by Landlord shall be carried out within seven (7) Business Days of the date of submission of the Pre-Schematics or revised Pre-Schematics, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such seven (7) Business Day period, it shall be deemed to have determined that the Pre-Schematics do so conform).

(2) Within thirty (30) days of Landlord's approval (or deemed approval) of the Pre-Schematics, Tenant shall submit to BPCA for review scaled schematic drawings (the "Schematics"), and shall identify, in reasonable detail, changes (if any) between the Schematics and Pre-Schematics. If Landlord determines that the Schematics conform to the Standards and are consistent with the Pre-Schematics, Landlord shall notify Tenant to that effect. If Landlord determines that the Schematics do not conform to the Standards and/or are inconsistent with the Pre-Schematics, Landlord shall so notify Tenant, specifying in reasonable detail those respects in which the Schematics do not so conform, and/or are inconsistent (as applicable), and Tenant shall revise the Schematics to so conform, or to be consistent (as applicable), and shall resubmit the same to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the Schematics do not so conform and/or are inconsistent (as applicable), or such longer period as Landlord in its reasonable judgment may approve. Each review by Landlord shall be carried out within seven (7) Business Days of the date of submission of the Schematics or revised Schematics, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such seven (7) Business Day period, it shall be deemed to have determined that the Schematics do so conform).

(3) Within forty-five (45) days of Landlord's approval (or deemed approval) of the Schematics, Tenant shall submit to BPCA for review design development plans and outline specifications (the "Design Development Plans" or "DDs"), and shall identify, in reasonable detail, changes (if any) between the Schematics and the Design Development Plans. If Landlord determines that the DDs conform to the Standards and are consistent with the Schematics, Landlord shall notify Tenant to that effect. If Landlord determines that the DDs do not conform to the Standards and/or are inconsistent with the Schematics, Landlord shall so notify Tenant, specifying in reasonable detail those respects in which the DDs do not so conform, and/or are inconsistent (as applicable), and Tenant shall revise the DDs to so conform, or to be consistent (as applicable), and shall resubmit the same to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the DDs do not so conform and/or are inconsistent (as applicable), or such longer period as Landlord in its reasonable judgment may approve. Each review by Landlord shall be carried out within seven (7) Business Days of the date of submission of the DDs or revised DDs, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such seven (7) Business Day period, it shall be deemed to have determined that the DDs do so conform).

(4) Within ninety (90) days of Landlord's approval (or deemed approval) of the DDs, Tenant shall submit final contract plans and specifications sufficient for putting Tenant's Work out to bid (the "Construction Documents"), and shall identify, in reasonable detail, changes (if any) between the DDs and the Construction Documents. If Landlord determines that the Construction Documents conform to the Standards and are consistent with the DDs, Landlord shall notify Tenant to that effect. If Landlord determines that the Construction Documents do not conform to the Standards and/or are inconsistent with the DDs, Landlord shall so notify Tenant, specifying in reasonable detail those respects in which the Construction Documents do not so conform, and/or are inconsistent (as applicable), and Tenant shall revise the Construction Documents to so conform, or to be consistent (as applicable), and shall resubmit the same to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the Construction Documents do not so conform and/or are inconsistent (as applicable), or such longer period as Landlord in its reasonable judgment may approve. Each review by Landlord shall be carried out within seven (7) Business Days of the date of submission of the Construction Documents or revised Construction Documents, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such seven (7) Business Day period, it shall be deemed to have determined that the Construction Documents do so conform).

(5) Tenant's submission of the Schematics and Construction Documents shall in each case be accompanied by a budget, which shall be revised with each submission to reflect the additional detail incorporated in the plan submissions.

(6) If and to the extent that Tenant's Use contemplates the use of portions of the Promenade and/or Plaza space at specified hours and/or on specified days, under a license from Landlord pursuant to Article 4 above, then all plans submitted hereunder shall include appropriate indications of the areas of such use, the location of kiosks, furniture or any other such items, and appropriate notations as to the periods of use,

(7) If Tenant desires to modify the approved Construction Documents (other than in any minor or insubstantial respects), Tenant shall submit the proposed modifications to BPCA for review and approval prior to implementing any such changes. The timetable for review, comment and approval shall be the same as is described in subsections (1), (2), (3) and (4), above.

(E) No later than thirty (30) days prior to the commencement of Tenant's Work, Tenant shall submit to Landlord reasonably acceptable documentation of the financing, equity and/or other funding arrangements that Tenant has made in order to obtain funds which are sufficient for the cost of performance of Tenant's Work, as said cost is reflected in the budget required to accompany the Construction Documents pursuant to Section 36 (D) (5), above.

(F) Prior to commencement of Tenant's Work, Tenant shall submit to BPCA payment and performance bonds, which must be satisfactory to BPCA in form and substance and be issued by a surety company licensed or authorized to do business in New York State.

(G) Barring Unavoidable Delays (as defined in Article 40 hereof), Tenant shall:

(1) commence Tenant's Work within thirty (30) days after the Commencement Date of the Lease, and

(2) Substantially Complete Tenant's Work by no later than three hundred (300) days after the Commencement Date of the Lease. The term "Substantially Complete," as applied to Tenant's Work, shall mean the completion of Tenant's Work (as described on Exhibit E hereto), subject only to minor Punch List Items which do not interfere with, or necessitate the postponement of the commencement of Tenant's operations (inclusive of all of Tenant's Uses) on the Demised Premises, as so certified by delivery to Landlord of a certificate by Tenant's Architect.

(H) All written agreements to perform any of Tenant's Work, or any other alterations performed pursuant to Article 8 hereof, shall include the following provisions:

(1) ["Contractor"]/["Subcontractor"]/["Materialman"] hereby agrees that immediately upon the purchase from ["contractor"]/["subcontractor"]/["materialman"] of Fixed Equipment to be incorporated in the Demised Premises (as such terms are defined in the lease pursuant to which the contract purchaser hereunder acquired a leasehold interest in the property (the "Lease")), such materials shall become the sole property of the City (as defined in the Lease and subject to the terms thereof), notwithstanding that such materials have not been incorporated in, or made a part of, such Demised Premises at the time of such purchase; provided, however, that neither the City nor Landlord (as defined in the Lease) shall be liable in any manner for payment or otherwise to ["contractor"]/["subcontractor"]/["materialman"] in connection with the purchase of any such materials and neither the City nor Landlord shall have any obligation to pay any compensation to ["contractor"]/["subcontractor"] / ["materialman"] by reason of such materials becoming the sole property of the City."

(2) ["Contractor"]/["Subcontractor"]/["Materialman"] hereby agrees that notwithstanding that ["contractor"]/ ["subcontractor"]/["materialman"] performed work at or furnished any materials for the Demised Premises (as such term is defined in the Lease) or any part thereof, neither the City nor Landlord shall be liable in any manner for payment or otherwise to ["contractor"]/["subcontractor"] / ["materialman"] in connection with the work performed at or materials furnished for the Premises."

(3) ["Contractor"]/["Subcontractor"]/["Materialman"] hereby agrees to make available for inspection by Landlord and the City during reasonable business hours, ["contractor's"]/["subcontractor's"]/["materialman's"] books and records relating to Tenant's Work, or any other alterations performed pursuant to the Lease, or the acquisition of any Fixed Equipment (as such term is defined in the Lease) furnished for the Premises."

(4) "All covenants, representations, guarantees and warranties of ["contractor"]/["subcontractor"]/["materialman"] hereunder shall, if this contract is taken over by the Landlord, be deemed to be made for the benefit of said Landlord under the Lease, and for the benefit of the City of New York (the "City"), and shall be enforceable against ["contractor"]/["subcontractor"]/["materialman"] by said Landlord."

(5) "Neither Landlord nor the City is a party to this ["agreement"] ["contract"] and will not in any way be responsible to any party for any claims of any nature whatsoever arising or which may arise from such ["contract"] ["agreement"] unless Landlord or the City shall take over this ["agreement"] ["contract"] and then only as to claims arising after this ["agreement"] ["contract"] is so taken over."

37. Signage; Advertising/Lighting :

(A) Tenant shall place no advertisements on the exterior of the Demised Premises. All signage on or about the Building or within the Demised Premises which can be seen from the Promenade or the Plaza, (but excluding any signs which cannot be seen from said locations) and any advertising within the Demised Premises which can be seen from the Promenade or the Plaza (but excluding any signs which cannot be seen from said locations) shall be subject to approval by BPCA not to be unreasonably withheld or delayed. BPCA will consult with the Tenant to develop signage and lighting that appropriately informs the public of the uses in the Demised Premises that are available to the public. Any advertising or signage displayed or placed without BPCA's prior approval shall be immediately removed by Tenant upon notice from BPCA. Under no circumstances shall Tenant be permitted to install any neon signage.

(B) Tenant shall neither sell nor advertise cigarettes, cigars, or any other tobacco products. Tenant shall be required to adhere to and enforce this policy.

38. Electricity and Other Utilities:

(A) Tenant must obtain, and pay for all costs of, any and all utilities connected with its use and occupancy of the Demised Premises (and with its use of the Promenade and/or Plaza, if and to the extent that BPCA licenses such facilities for part-time use in connection with the operation of its business, as set forth in Article 4, above). This includes (1) the cost of installing all interior duct, wiring and plumbing facilities necessary to connect to, and effect the interior distribution of, the utility facilities brought by BPCA to the Demised Premises, (2) electricity, water and sewer charges, (3) obtaining the appropriate permits and approvals, and installing, maintaining and repairing all meters, in connection with Tenant's service, and (d) paying any utility charges directly to the companies supplying such utility services.

(B) Notwithstanding the foregoing, BPCA will provide utilities stubbed to the interior of the Premises, in accordance with the specifications, and subject to the conditions, set forth in Exhibit D, and will install the mechanical systems as set forth therein. The mechanical and electrical capacities, as specified, reflect certain accommodations requested by Tenant to support its operations. In consideration of these accommodations, Tenant shall contribute the sum of eight hundred thousand (\$800,000) dollars (the Capital Reimbursement) toward the increase in the cost of such installation necessitated by Tenant's operations. The Capital Reimbursement shall be payable in four equal annual installments, each in the amount of \$200,000, paid on the Commencement Date, and on the first, second and third, anniversaries of the Commencement Date.

(C) As an integral part of the HVAC system for the Demised Premises, Landlord proposes (subject to satisfaction of applicable permitting requirements) to install a River Water Heating and Cooling System ("Proposed System").

(D) Tenant will be responsible for (1) connecting to the utilities, and (2) upgrading the system(s) if and to the extent that the capacity is inadequate for the Tenant's operations. Landlord, on reasonable notice to Tenant, shall have access to such portions of the Demised Premises as may be necessary in connection with Landlord's maintenance and regular cleaning of the Proposed System, the primary components of which will be located under the existing promenade deck on the north side of the Building.

(E) Neither BPCA nor the City shall have any obligation to provide any utility services to the Demised Premises; and neither BPCA nor the City shall have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Demised Premises, or any part thereof, or properly maintained.

(F) BPCA shall not be liable to Tenant or to any person for of any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any person or to the Premises, caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance, or by or from water, rain or snow which may leak, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works, unless such failure, injury or

damage is caused by BPCA's gross negligence or intentional tortious acts, nor shall Tenant be relieved from the performance of any obligation under this Lease unless such failure, injury or damage is caused by BPCA's gross negligence or intentional tortious acts.

39. Consents:

(A) Unless otherwise specified in this Lease, whenever Landlord's consent or approval is required, then (unless otherwise specified in this Lease), said consent may be granted or denied in Landlord's sole discretion.

(B) Tenant hereby waives any claim against Landlord which it may have based upon any assertion that Landlord, has unreasonably withheld or unreasonably delayed its consent or approval (nor shall Tenant make any such claim by way of set-off, counterclaim or defense), and Tenant agrees that its sole remedy, when it believes that Landlord has unreasonably withheld or delayed its consent or approval when it was bound to do so, shall be an action or proceeding to enforce any such provision by way of specific performance, injunction or declaratory judgment. In the event of such a determination in favor of Tenant, the requested consent shall be deemed to have been granted; however, Landlord shall have no liability to Tenant for its refusal or failure to give such consent. The remedies for Landlord's unreasonably withholding or delaying its consent or approval shall be solely as provided in this Article 39.

40. Unavoidable Delays:

(A) If Landlord or Tenant (as applicable) shall fail to punctually perform any term, covenant or condition on its part to be performed under this Lease as a result of any strikes, lockouts or labor disputes or acts of God, governmental restrictions, regulations or controls, enemy or hostile government action, civil commotion, riot or insurrection, fire or other casualty or other events similar or dissimilar to those enumerated in this Article beyond the reasonable control of Landlord or Tenant (as applicable), and which delays or failures are not caused by Landlord or Tenant (as applicable) (collectively, "Unavoidable Delays"), then such failure shall be excused and not be a breach of this Lease. No such Unavoidable Delay by Landlord shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

(B) Notwithstanding anything herein to the contrary, Tenant's failure to have sufficient funds to make any payment required under this Lease shall not be deemed an "Unavoidable Delay."

41. Broker:

Landlord and Tenant each covenants, warrants and represents to the other (with the party making said covenant, representation and warranty being referred to herein as the "Representing Party", and the party to whom said covenant, etc., is being made, being referred to herein as the "Other Party") that the Representing Party has not dealt with any broker, finder or similar person entitled to a commission, fee or other compensation who was instrumental in consummating this Lease and that no conversations or prior negotiations were had by the Representing Party or anyone acting on its behalf with any broker, finder or similar person concerning the renting of the Demised Premises. The Representing Party agrees to indemnify and hold the Other Party harmless against and from all costs, expenses, damages and liabilities, including reasonable attorneys' fees, arising from any claims for brokerage commissions, finder's fees or other compensation which result from or arise out of any conversations, negotiations or actions had by said Representing Party or any one acting on its behalf, with any broker, finder or similar person. The provisions of this Article 41 shall survive the expiration or earlier termination of this Lease.

42. Partial Invalidity; Joint Liability:

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Lease or the application of such provisions to person or circumstances other than those as to which it is held void, unenforceable or invalid shall be valid and enforced to the fullest extent permitted by law. If there shall be more than one Tenant, or if more than one person or entity constitutes Tenant, they shall all be bound, jointly and severally, by the terms, covenants and conditions of this lease.

43. Rent Arrears:

(A) In the event any payment under this Lease shall be made in the form of a check from any person, firm or corporation other than the person, firm or corporation named in this Lease, the acceptance of same by Landlord shall not, under any circumstances, be deemed recognition of a subletting or any assignment of this Lease, regardless of the number of times that such payment shall be made by such other person, firm or corporation.

(B) If any installment of Rent is not paid when due, Tenant shall also pay Landlord interest thereon (the "Interest Rate") from the due date until paid at the greater of (a) the prime rate as most recently published in The Wall Street Journal Eastern Edition (or, in the event that The Wall Street Journal fails to publish such prime rate, such other publication as Landlord shall designate in its sole discretion) (the "Prime Rate") plus two percent (2%) per annum or (b) twelve percent (12%) per annum. The term "rent" shall include all Base Rent, Percentage Rent, Use Fee, and/or other charges payable under this Lease, for nonpayment of which Landlord shall have the same remedies as for a default in the payment of Annual Rent. Notwithstanding anything in this Lease to the contrary, Landlord may draw down on the Security to the extent required for the payment of any amounts owed by Tenant pursuant to the first sentence of this subsection (B) without being obligated to give Tenant any prior notice that such amounts are due. If Tenant shall be more than ten (10) days late in making any payment due under this Lease more than three (3) times in any twelve (12) month period, Landlord, shall in addition to any other remedies provided for in this Lease, be entitled to demand from Tenant, and Tenant agrees promptly to deposit with Landlord, an amount equal to three months of the Annual Rent and Use Fee then due as additional Security Deposit under this Lease.

44. OFAC Certification and Indemnification:

(A) Tenant represents, warrants and certifies to and for the benefit of Landlord that Tenant is not now and has never been nor shall it be at any time prior to the mutual execution and delivery of this Lease an individual, corporation, partnership, limited partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this lease, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC ("Specially Designated Nationals and Blocked Persons") or otherwise. Neither Tenant nor any Person who owns an interest in Tenant (collectively, a "Tenant Party") is now or has ever been, nor shall be at after the mutual execution and delivery of this lease, a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.G. 5312 (a) (z), as periodically amended ("Financial Institution"), is prohibited from transacting business of the type contemplated by this lease, whether such prohibition

arises under United States law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(B) Tenant represents, warrants and certifies to and for the benefit of Landlord that it has taken, and shall continue to take until the expiration or any earlier termination of the Term of this lease, such measures as are required by applicable law to assure that the funds used to pay rent and any other charges due hereunder are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and, to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(C) Tenant represents, warrants and certifies to and for the benefit of Landlord that neither Tenant nor any Tenant Party: (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws (as hereinafter defined); (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (iii) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. For purposes of subclause (i) of the previous sentence, the term "Anti-Money Laundering Laws" shall mean all applicable laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and /or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a Financial Institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include, without limitation, the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "Patriot Act"), the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

(D) Tenant represents, warrants and certifies to and for the benefit of Landlord that it is in compliance with any and all applicable provisions of the Patriot Act.

(E) For a period of two (2) years after the expiration or any earlier termination of the Term of this Lease, Tenant agrees to cooperate with Landlord, and to cause each Tenant Party to cooperate with Landlord, in providing such additional information and documentation respecting Tenant's and each Tenant Party's legal or beneficial ownership, policies, procedures (to the extent required by applicable laws) and sources of funds as Landlord deems reasonably necessary or prudent to enable Landlord to comply with Anti-Money Laundering Laws now in existence or hereafter enacted or amended.

(F) Tenant hereby agrees to forever defend, indemnify and hold harmless Landlord and the City from and against any and all claims, damages, costs, fines, penalties, losses, risks, liabilities and expenses (including, without limitation, attorneys' fees and costs) arising from or related to a breach of any of the foregoing representations, warranties, certifications and agreements.

(G) The provisions of subsections (E) and (F) above shall survive the expiration or other termination of this Lease.

45. Holding Over:

If Tenant holds over without the consent of Landlord after expiration or termination of this Lease, (a) Tenant shall pay as a use and occupancy charge for each month of the holdover tenancy an amount equal to 200% multiplied by the greater of (i) the fair market rental value of the Demised Premises for such month (as reasonably determined by Landlord), or (ii) the rent which Tenant was obligated to pay for

the month immediately preceding the end of the Term; and (b) provided that, during the holdover period, Landlord notify Tenant that Landlord has entered into a lease with a New Tenant (as defined below), Tenant shall be liable to Landlord for and indemnify Landlord against: (i) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Demised Premises (a "New Tenant ") by reason of the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant; (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant; and (iii) any claim for damages by any New Tenant. No holding over by Tenant after the Term shall operate to extend the Term. Notwithstanding the foregoing, the acceptance of any use and occupancy charges paid by Tenant pursuant to this Section Article 45 shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding. The provisions of this Article 45 shall survive the expiration or other termination of this Lease.

46. Captions:

The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

47. Security; Construction Escrow:

(A) (1) Concurrently with the execution of this Lease, Tenant is depositing with Landlord the sum of seventy-five thousand (\$75,000) dollars. Said deposit (together with the \$50,000 "SRI Deposit" made by Tenant with Landlord pursuant to the Supplemental Request for Information issued June 14, 2010) shall constitute the initial security in the amount of one hundred twenty-five thousand (\$125,000) dollars (the "Initial Security") for the performance and observance by Tenant of the terms, provisions and conditions of this Lease. An additional two hundred seventy-five thousand (\$275,000) dollars of security ("Additional Security") will be furnished by Tenant to Landlord within 5 days following the Commencement Date, for a total security of four hundred thousand (\$400,000) dollars (with the Initial Security and Additional Security being referred to collectively herein as the "Security"). If Tenant defaults in respect of any such terms, provisions and conditions (including, but not limited to, the payment of rent and additional rent), Landlord may use, apply or retain the whole or any part of said Security to the extent required for the payment of any rent or additional rent, or any other matter as to which Tenant is in default, or for any sum which Landlord, may expend or may be required to expend by reason of said default, including, but not limited to, any damages or deficiency in the reletting of the Demised Premises, whether such damage or deficiency accrued before or after summary proceedings or other re-entry by Landlord.

(2) In the case of any use, application or retention of the Security as aforesaid, Tenant shall, within ten (10) business days after demand, pay to Landlord the sum so used, applied or retained, which shall be added to the Security so that the same shall be replenished to its former amount.

(B) (1) Concurrently with the execution of this Lease, Tenant is depositing in escrow with Landlord the additional sum of one hundred twenty-five thousand (\$125,000) dollars, and shall deposit in escrow with Landlord the additional sum of two hundred twenty-five thousand (\$225,000) dollars on the Commencement Date. These funds are referred to herein as the "Construction Escrow," and shall be available for withdrawal by Tenant for payment of Construction Costs in accordance with the procedures set forth below. As used herein, the term "Construction Costs" refers to the hard and soft costs (the latter consisting of design fees and testing expenses) incurred by Tenant beginning on the date of execution of the Lease in connection with the performance of Tenant's Work.:

(a) Tenant shall submit to Landlord a requisition (a "Cost Requisition") consisting of (i) a cover sheet, itemizing the amounts for which reimbursement is sought, by contractor and amount, with such cover sheet being signed by an authorized officer of Tenant, and with the following attachments; (ii) copies of invoices, from the listed contractors, marked "paid"; (iii) a waiver of lien executed by each of the listed contractors; and (iv) a certificate, executed by Tenant's Architect, stating that the work for which reimbursement is sought has been properly and completely performed.

(b) Within ten (10) Business Days after receipt of the Cost Requisition, Landlord shall notify Tenant (the "Response Notice") whether, based upon a review/inspection of the relevant work by Landlord or Landlord's Architect, (i) the Cost Requisition is accepted for payment, or (ii) the Cost Requisition is rejected. In the latter event, the Response Notice shall specify the reasons for the rejection.

(c) (i) If the Response Notice states that the Cost Requisition is accepted for payment, then within five (5) Business Days after issuance of such Notice, Landlord shall reimburse Tenant, from the Construction Escrow, for the amount of the Cost Requisition, by making a wire transfer of funds in the appropriate amount to Bank Of America, NY, NY, ABA: 026009593, Pier A Battery Park Associates, Account Number: 483037479894.

(ii) If the Response Notice states that the Cost Requisition is rejected, then Tenant shall correct the deficiencies identified in said Notice, and shall notify Landlord when such deficiencies have been corrected (the "Correction Notice"). Within ten (10) Business Days after receipt of the Correction Notice, Landlord shall notify Tenant (the "Second Response Notice") whether, based upon a review/inspection of the relevant work by Landlord or Landlord's Architect, such corrections have satisfactorily been made. If so, then within five (5) Business Days after issuance of such Notice, Landlord shall reimburse Tenant, from the Construction Escrow, for the amount of the Cost Requisition, by making a wire transfer of funds in the appropriate amount to Bank Of America, NY, NY, ABA: 026009593, Pier A Battery Park Associates, Account Number: 483037479894.

(d) Notwithstanding anything herein to the contrary, if Landlord terminates this Lease due to an Event of Default, any funds remaining in the Construction Escrow (including principal and accrued interest, if any) shall thereupon be forfeited to, and become the property of, Landlord, without the requirement of any notice by Landlord to Tenant of such forfeiture.

(C) (1) In the event of the sale or other transfer by Landlord of its interest in this Lease, under such circumstances as are permitted by the City under the City Lease, Landlord shall have the right to transfer the Security, and such amounts (if any) as remain of the Construction Deposit, to the vendee, and Landlord shall thereupon be released by Tenant from all further liability for the release of such Security and (as applicable) Construction Deposit, and Tenant agrees to look to the new Landlord solely for the return of said Security and (as applicable) Construction Deposit; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security, or (as applicable) Construction Deposit, to a new Landlord.

(2) Tenant covenants that it will not assign or encumber the monies deposited herein as Security or as the Construction Deposit, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

(3) Landlord shall deposit the Security and the Construction Deposit in two separate segregated accounts, and shall not commingle said funds with any other funds; provided, however, that in the event that Landlord chooses to deposit the Security or Construction Deposit in an interest-bearing account, any interest accrued on the Security shall be the property of Landlord and shall not become part of the Security, and any interest accrued on the Construction Deposit shall (except upon a forfeit of the Construction Deposit as hereinafter provided) shall be the property of Tenant and become part of said Deposit.

48. Certain Definitions:

(A) The term "Landlord" as used in this lease means only the Landlord, or the mortgagee in possession, for the time being of the land and building (or the Landlord of a lease of the building or of the land and building) of which the Demised Premises form a part, so that in the event of any sale or sales or conveyance, assignment or transfer of said land and building or of said Lease, or in the event of a lease of said building, or of the land and building, the said Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder, and it shall be deemed and construed

without further agreement between the parties or their successors in interest, or between the parties and the purchaser, grantee, assignee or transferee at any such sale, or the said lessee of the building, or of the land and building, that the purchaser, grantee, assignee or transferee at any such sale or the said lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

(B) The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

(C) The term "Business Days" as used in this lease, shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with regard to HVAC service. Wherever it is expressly provided in this Lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

49. Adjacent Excavation; Shoring:

If an excavation shall be made upon land adjacent to the Demised Premises (including, but not limited to, the Plaza), or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation a license to enter upon the Demised Premises for the purpose of doing such work as said person shall deem necessary and to preserve the wall or the Building of which the Demised Premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Landlord, or diminution or abatement of rent.

50. Rules and Regulations:

Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations annexed hereto, and such other and further reasonable Rules and Regulations as Landlord or Landlord's agents may from time to time adopt provided such Rules and Regulations are not discriminatorily applied. Notice of any additional rules or regulations shall be given in such manner as Landlord may elect. Nothing in this lease contained shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

51. [intentionally omitted]:

52. Pornographic Uses Prohibited:

Tenant agrees that the value of the Demised Premises and the reputation of the Landlord will be seriously injured if the Demised Premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the Demised Premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the Demised Premises, nor permit use of the Demised Premises for nude modeling, rap sessions, or as a so called rubber goods shop, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the Demised Premises. This Article shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this Lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial matter with prurient appeal, or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal Law 235.00.

53. Estoppel Certificate:

(A) Tenant, at any time, and from time to time, upon at least ten (10) days prior notice by Landlord, shall execute, acknowledge and deliver to Landlord, and/or to any other person, firm or corporation specified by Landlord, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Landlord under this lease, and, if so, specifying each such default and such other information as shall be required of Tenant.

(B) Landlord, at any time, and from time to time, upon at least ten (10) days prior notice by Tenant, shall execute, acknowledge and deliver to Tenant, and/or to any other person, firm or corporation specified by Tenant, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Tenant under this lease, and, if so, specifying each such default and such other information as shall be required of Landlord.

54. Successors and Assigns:

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this Lease, their assigns. Tenant shall look only to Landlord's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Landlord in the event of any default by Landlord hereunder, and no other property or assets of such Landlord (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under, or with respect to, this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use and occupancy of the Demised Premises.

55. Rent; Net Lease:

(A) As used herein, the terms "Rent" refers to all charges and other sums payable by Tenant to Landlord pursuant to this Lease, whether or not specifically designated as such.

(B) Tenant hereby acknowledges and agrees that this Lease is a "triple-net" lease. Except as otherwise set forth in Article 7 hereof, Tenant shall be entirely responsible for paying all operating expenses relating to the Demised Premises (including, without limitation, electricity and other utilities, insurance, security and non-structural repairs, and shall bear all other risks, expenses and responsibilities relating thereto.

56. Financial Reporting by Tenant; Landlord Audit Rights:

(A) In respect of the month in which Tenant commences business operations at the Demised Premises, and for each month thereafter during the Term, Tenant shall submit monthly statements of gross receipts from all categories of income in a format approved by BPCA. At the end of each operating year, Tenant will be required to submit a detailed income and expense statement for the past year's operation, in a format approved by BPCA. Tenant will be required to maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to BPCA.

(B) Tenant shall keep and maintain at all times full and correct records and books of account of the operations of the Demised Premises in accordance with such generally accepted accounting standards and accurately shall record and preserve for a period of six (6) years after the end of the relevant fiscal period of Tenant, the record of its operations upon the Premises. Within a reasonable period (which shall be not less than 10 days) after request by Landlord, Tenant shall make said records

and books of account available from time to time for inspection by Landlord and Landlord's designee during reasonable business hours at a location designated by Tenant in New York City. At any time at which Tenant shall make said records and books of account available for inspection, it may inform Landlord of its belief that the public disclosure of the information contained therein or any part thereof would cause substantial injury to the competitive position of Tenant's enterprise and request that to the extent permitted by law Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying with any provision of applicable law requiring such disclosure).

57. Miscellaneous:

(A) Except for security deposits and any other amounts deposited with Landlord in connection with the payment of insurance premiums, assessments and other similar charges or expenses, the Tenant shall not pay rent or other sums payable under this Lease to Landlord for more than two (2) months in advance (unless the City gives its consent to a period of three (3) months, which consent will not be unreasonably withheld).

(B) At the City's option, on the termination of the City Lease pursuant to Article 24 thereof, the Tenant shall attorn to, or shall enter into a direct lease with the City, on terms identical to this Lease for the balance of the unexpired term of this Lease.

58. Security of Demised Premises:

At its sole cost and expense, Tenant shall provide all security personnel for the Demised Premises, and provide a 24 hour-a-day security system at the Demised Premises in accordance with plans approved by BPCA. Tenant must establish a CCTV program which provides interior and exterior coverage of key locations. Tenant will provide BPCA with access via IP address to data from the exterior cameras. In implementing the security system for the Demised Premises, Tenant shall also cooperate and comply with the findings and recommendations of the New York City Police Department's Crime Prevention Survey, which is anticipated to occur following the Effective Date of the Lease..

59. Hazardous Waste:

Effective as of the Commencement Date, Tenant shall assume all liabilities arising from the production or dissemination, by or in connection with Tenant's Use, of any pollutants, contaminants, waste materials, hazardous materials, hazardous substances, toxic substances or words of similar import (as such terms are used in any applicable federal, state or local statutes, laws, rules or regulations) (collectively, "Hazardous Materials"), and shall indemnify and hold harmless Landlord from and against all such liabilities (including, but not limited to, reasonable attorneys fees and costs). Said indemnification obligation shall survive the expiration or other termination of this Lease. The aforesaid acknowledgement by BPCA of Tenant's assumption of liability in respect of Hazardous Materials does not constitute BPCA's consent to the use of such Materials. Notwithstanding the foregoing, Tenant shall not be liable for Hazardous Materials that existed on the Premises prior to the Commencement Date and Landlord shall indemnify and hold Tenant and the City harmless from and against all such liabilities (including, but not limited to, reasonable attorneys fees and costs). Said indemnification obligation shall survive the expiration or other termination of this Lease

60. No Discrimination

(A) Tenant, in its use, operation or occupancy of the Demised Premises and employment and conditions of employment in connection therewith, or in connection with the erection, maintenance, repair, restoration, alteration or replacement of, or addition to, the Demised Premises (including, but not limited to, Tenant's Work) shall (a) not discriminate nor permit discrimination against any person by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and (b) comply

with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting such discrimination or pertaining to equal employment opportunities.

(B) Tenant shall be bound by and shall include the following paragraphs (1) through (5) of this Section 60 (B), (i) in all construction agreements providing for improvements to the Demised Premises (including, but not limited to, Tenant's Work) and (ii) in all service and management agreements and agreements for the purchase of goods and services and any other agreements relating to the operation of the Demised Premises which provide for aggregate payments in excess of \$25,000, in such manner that these provisions shall be binding upon the parties with whom such agreements are entered into (any party being bound by such provisions shall be referred to in this Section as "Contractor"):

(1) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status, shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting such discrimination or pertaining to equal employment opportunities and shall undertake diversity programs to ensure that employees and applicants for employment are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, payoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(2) Contractor shall request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such agency, union or representative will cooperate in the implementation of contractor's obligations hereunder.

(3) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of contractor that all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status.

(4) Contractor shall comply with all of the provisions of the Civil Rights Law of the State of New York and Sections 291-299 of the Executive Law of the State of New York, shall upon reasonable notice furnish all information and reports deemed reasonably necessary by Owner and shall permit access to its relevant books, records and accounts for the purpose of monitoring compliance with the Civil Rights Law and such sections of the Executive Law.

(5) Contractor shall include in all agreements with subcontractors the foregoing provisions of Sections (1) through (4) in such a manner that said provisions shall be binding upon the subcontractor and enforceable by Contractor, Tenant and Owner. Contractor shall take such action as may be necessary to enforce the foregoing provisions. Contractor shall promptly notify Tenant and Owner of any litigation commenced by or against it arising out of the application or enforcement of these provisions, and Tenant and Owner may intervene in any such litigation.

(C) Tenant has reviewed and participated in the development of the Diversity Program, a copy of which is annexed hereto as Exhibit F. Tenant shall, and shall cause each of its agents, contractors and subcontractors to promptly and diligently carry out its obligations under such Program in accordance with the terms thereof.

(D) Tenant agrees that it shall not, directly or indirectly, employ for the performance of (i) any repairs or maintenance pursuant to Article 7, (ii) Tenant's Work, or (iii) any other Alterations pursuant to Article 8 (items (i), (ii), and (iii), collectively, the "Work"),

(1) anyone who is not competent, faithful and skilled in the Work for which he/she shall be employed; and whenever Landlord shall inform the contractor performing the Work, in writing, that any employee is, in his/her opinion, incompetent, unfaithful, or disobedient, that employee shall be discharged from the Work forthwith, and shall not again be employed upon it; or

(2) any labor, materials, or means whose employment or utilization may tend to or in any way cause or result in strikes, work stoppages, delays, suspensions of Work or similar troubles by workers employed by the contractor performing the Work, or by its subcontractors, or by any of the trades working in or about the area where Work is being performed, or on any other building or premises owned or operated by Landlord or the City. Any violation by Tenant of this requirement shall be considered a default under Article 21 of this Lease.

(E) Tenant shall comply with the provisions of Article 21 of the City Lease,

(F) Both Landlord and the City and their respective designees shall be beneficiaries of the agreement by which Tenant is bound pursuant to Section 21 .02 (c) of the City Lease, Landlord hereby reserves the right, on behalf of itself and the City, and their respective designees, as such third party beneficiaries, to seek specific performance by Tenant, at the expense of Tenant, of the obligations set forth therein.

(G) Tenant shall retain for six (6) years all forms completed by Tenant and any Subtenants and, at the Landlord or the City's request, shall permit Landlord or the City (as applicable) upon reasonable notice, to inspect such forms and provide Landlord or the City (as applicable) copies thereof.

61. Rules and Regulations, etc.:

The Rules and Regulations, and Exhibits A through H, as annexed hereto, are an integral part of this Lease.

62. Announcements: From and after the Effective Date, Landlord, Tenant and the EDC shall coordinate with each other regarding any press releases, or other public statements, issued in respect of Tenant occupancy of the Demised Premises.

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed and sealed this Lease as of the day and year first above written.

**BATTERY PARK CITY AUTHORITY, D/B/A
HUGH L. CAREY, BATTERY PARK CITY AUTHORITY**

By: 

Name:

Title:

**GAYLE M. HORWITZ
PRESIDENT & CEO**

PIER A BATTERY PARK ASSOCIATES, LLC,

By: 

Name: Paul Larnas

Title: Authorized Officer

ACKNOWLEDGEMENTS

STATE OF NEW YORK,

SS.:

COUNTY OF West

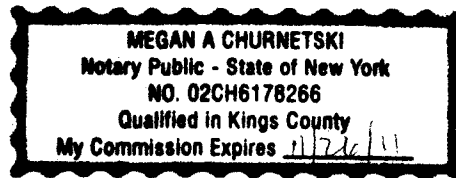
On the 1st day of March in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Carle M. Horowitz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Megan A. Churnetski
NOTARY PUBLIC

STATE OF NEW YORK,

SS.:

COUNTY OF West



On the 1st day of March in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul Lamas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Megan A. Churnetski
NOTARY PUBLIC



**RULES AND REGULATIONS ATTACHED TO AND MADE PART OF
THIS LEASE IN ACCORDANCE WITH ARTICLE 61**

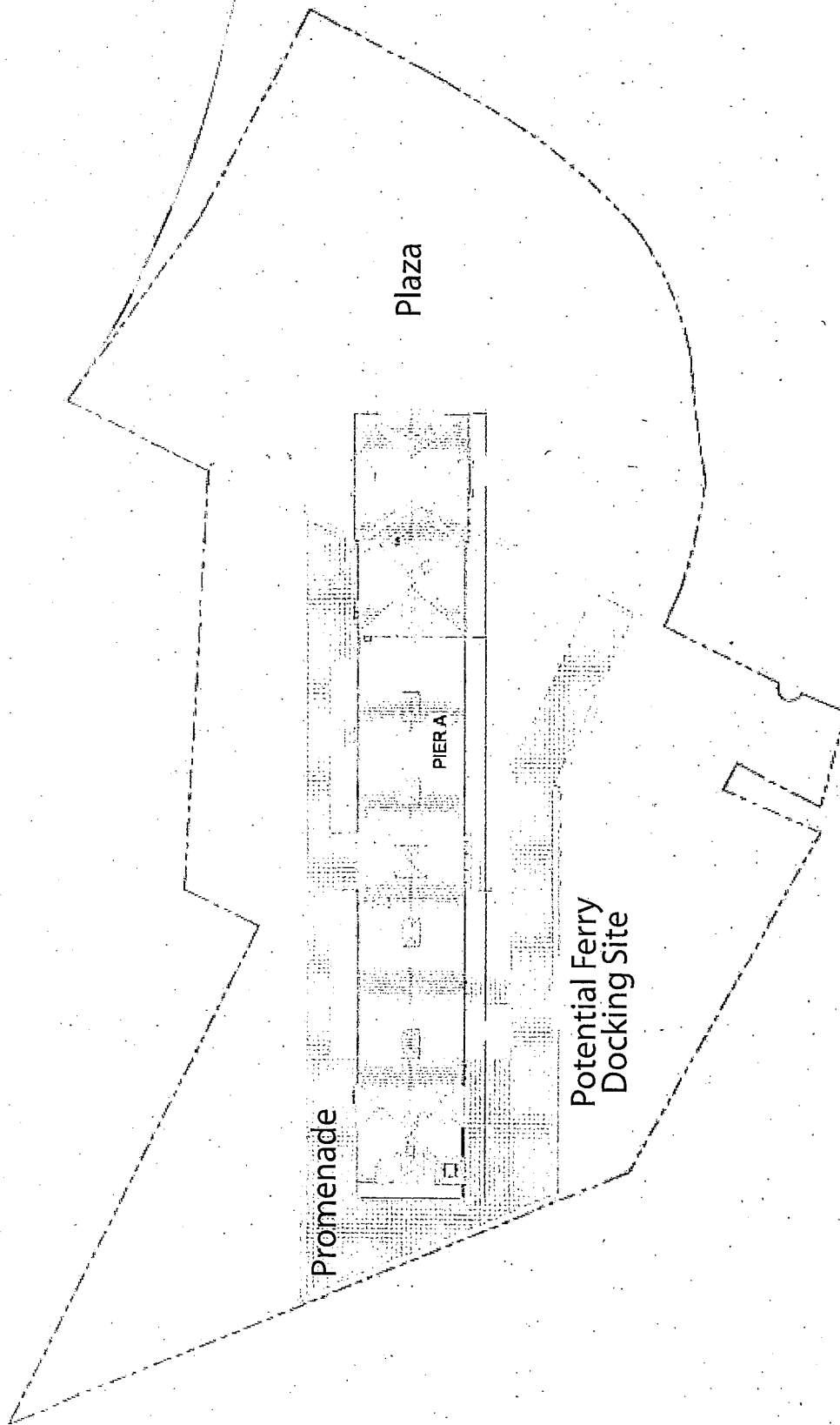
1. Except as otherwise permitted pursuant to this Lease (including the Exhibits hereto), the sidewalks, entrance, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by Tenant or used for any purpose other than for ingress to and egress from the Demised Premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Landlord
2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.
3. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Demised Premises (with the exception of such cooking and cleaning gases or odors as are typically associated with a restaurant use), or permit or suffer the Demised Premises to be occupied or used in a manner offensive or objectionable to Landlord or to persons living in the vicinity of the Building, or visiting the area in which the Building is located.
4. Tenant shall not mark, paint, drill into, or in any way deface any part of the Demised Premises or the building of which they form a part, except to the extent that the same is approved by Landlord as part of Tenant's Work pursuant to the procedures set forth in Articles 8 and 36 of this Lease. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct. Tenant shall not lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Demised Premises and, if linoleum, or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited. The foregoing shall not prohibit the Tenant from attaching decorations, art work and other ornaments necessary to ready the Premises for the public, which are not typically identified on plans and specifications (e.g., ex. decorative paintings).
5. Except in compliance with all applicable laws, Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible or explosive, or hazardous fluid, material, chemical or substance, or cause or permit any offensive odors of cooking or other processes, or any objectionable odors to permeate in or emanate from the Demised Premises.
6. Tenant shall not place a load on any floor of the Demised Premises exceeding the floor load per square foot area which was designated to carry and which is allowed by law. Landlord reserves the right to reasonably prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in such setting sufficient in Landlord's reasonable judgment to absorb and prevent vibration or noise which would be reasonably expected to cause damage to the Demised Premises or would be reasonably expected to annoy persons living in the vicinity of the Building, or visiting the area in which the Building is located.
7. Refuse and Trash – Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Building Rule 7, and, at Tenant's sole costs and expense, shall indemnify, defend and hold Landlord harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such non-compliance, utilizing counsel reasonably satisfactory to Landlord.
8. Tenant shall cooperate with Landlord during any special events or unanticipated events or emergencies.

9. Tenant shall prohibit smoking on the Demised Premises or Promenade, and adhere to and enforce this policy. As to the Plaza, Tenant may maintain a designated, limited area for smoking as part of the outdoor seating on the Plaza for its eating establishments located within the Demised Premises, if and to the extent that such smoking area is permitted by the regulations of the New York City Department of Health, and of any other governmental authority having jurisdiction of such area.

10. Tenant shall refrain from the use of polystyrene packaging or food containers in its operations.

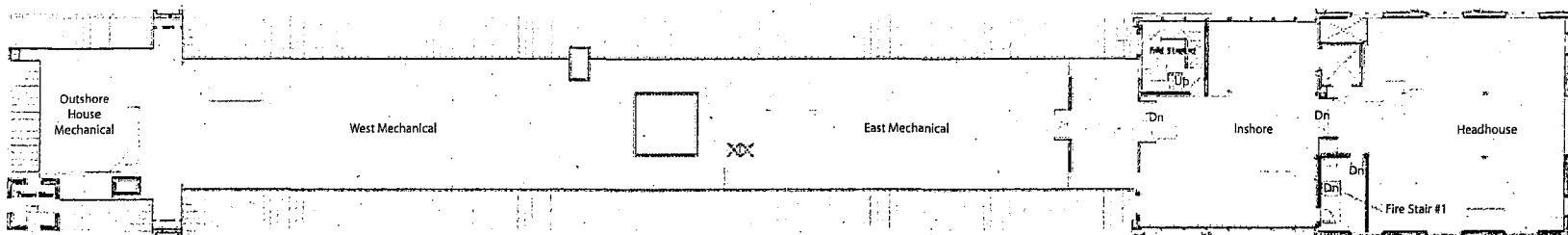
EXHIBIT A:
DEMISED PREMISES AND SITE LOCATION

See attached (1) site plan showing the location of the Pier A Building, and (2) floor plans for each of the three floors,

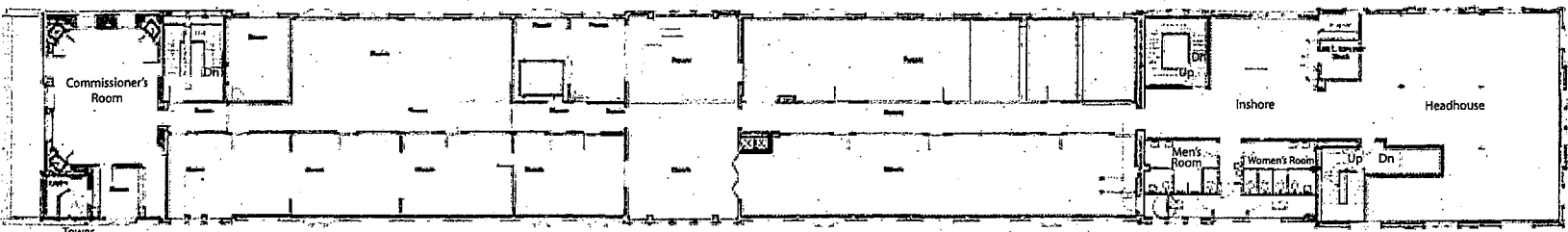


Site Plan

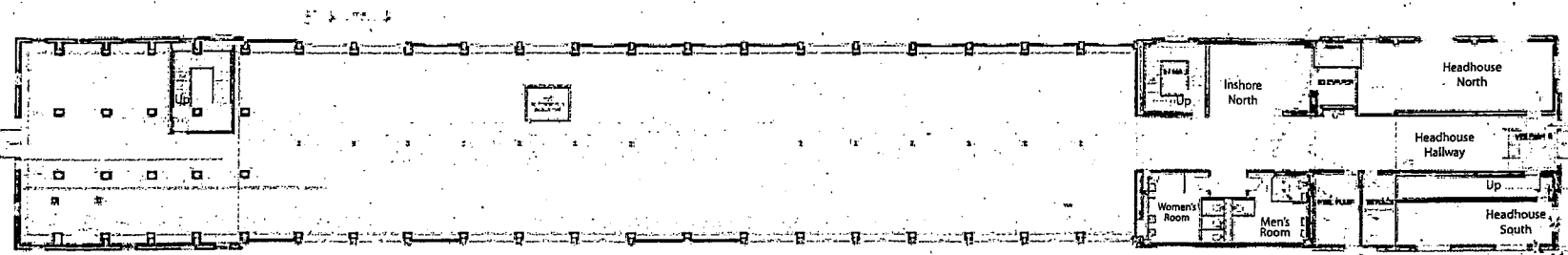
Floor Plans



Third Floor



Second Floor



First Floor

Scale: 10' L 20'



EXHIBIT B:
TENANT'S PROPOSED USE OF PUBLIC AREAS

Tenant's use of the Public Areas shall be in keeping generally with the descriptions provided below, and shall be subject to all conditions, restrictions and approvals set forth in Section 4 of the Lease.

• **Outdoor Waterside Seating**

Movable tables, chairs and benches for outdoor dining seating with movable wait and bus stations as needed. Located at the western side of Pier A.

• **Outdoor Plaza Seating**

Movable tables, chairs and benches for outdoor dining seating with movable wait and bus stations as needed. Located at the eastern side of Pier A.

• **Seasonal Outdoor Kitchen**

Movable custom-fabricated cook station for food preparation. Electrical service may be able to be provided with a dedicated connection from the building or located on the plaza. Gas services may be able to be provided through a dedicated connection from the building or portable tanks.

• **Main Public Plaza**

Amenities to support various activities throughout the year may include:

- Tents or food stalls: Overhead portable canopies with portable tables or displays
- Portable Stage: A movable, raised performance platform that can be assembled or disassembled within 1 day. Temporary electrical service may be able to be provided from dedicated power feeds at the building
- Seating or Tables: Movable tables, chairs and benches for outdoor events

• **Bicycle Rental Kiosk**

Seasonal enclosed kiosk for rental, display and minor maintenance of bicycles. A plug-in electrical connection on the plaza may be able to serve the bicycle kiosk.

EXHIBIT C:
TENANT'S USE PROGRAM FOR DEMISED PREMISES

Narrative of Program of Uses

Visitor Information Center

Location: 1st Floor

The Gateway to the New York Harborway is a staffed center for disseminating information about the city, state and federal parks that encompass the harborway, historic landmarks and cultural and local attractions. With its interactive media information displays, the center is highly visible and directly accessible from the plaza. Tenant to be established in coordination with BPCA.

Beer Garden

Location: 1st Floor, outdoor seating as approved by BPCA

Atlantic Beer Garden occupies the central area of the 1st Floor and serves food and drinks with open seating (subject to approval by BPCA) available indoors and outdoors.

Ground Floor Restaurant

Location: 1st Floor, outdoor seating extended to pier deck

Restaurant area with hosted seating providing indoor table service and bar seating.

Outdoor Waterside Seating

Location: Promenade surrounding the western end of Pier A

Outdoor picnic table seating available to be served by the Beer Garden or Ground Floor Restaurant (subject to approval by BPCA);

Seasonal Outdoor Kitchen and Plaza Seating

Location: Plaza, near Southeast Entry

Outdoor seating area with food service provided by an outdoor kitchen (subject to approval by BPCA).

Operations and Sales

Location: 2nd Floor

Operations office, staff areas and support space for the employees and management of Pier A.

Fine Dining

Location: 2nd Floor

A hosted restaurant with primary entry via the historic staircase leading up from the Southwest entrance at the 1st Floor. Accessible entry is via elevator. An additional lounge area with a bar will be at the center of the floor, available to restaurant patrons. The existing historic rooms and architectural elements provide an ideal layout for intimate dining rooms. The Commodore's Room and the connected terrace overlooking the harbor will be a primary feature of the restaurant for dining and special events.

Event Space

Location: 3rd Floor

An open floor space available for small-scale music and performance events, catering or private parties. Access to the 3rd Floor is via existing stairs or elevator.

Operational Plan

Hours of Operations

Main Floor Restaurant – 8:00 am to 4:00 am (based on demand and in compliance with New York State law)

2nd Floor Restaurant – 11:30am to Midnight

3rd Floor Event Space – Subject to specific events

Job Positions

Servers
Bartenders
Hostesses
Managers
Executive Chef
Kitchen Staff
Maintenance Staff (Porters, Cleaners and Dishwashers)
Maintenance Manager
Cleanliness Manager
Sales and Catering Staff
Security Staff
Administration and Bookkeeping Staff

EXHIBIT D:
LANDLORD'S WORK

GENERAL DESCRIPTION:

Rehabilitation work includes the repair of the sub-piers, the installation of a new structural deck at the first level, increasing the structural load capacity, the restoration of the core and shell as approved by the New York City Landmarks Preservation Commission, and providing (i) the HVAC system, other than the interior distribution, (ii) electrical connection to the Demised Premises, and the switchgear for the electrical service, (iii) telecom connection stubbed to the interior of the Demised Premises, (iv) fire protection, (v) fire alarm and (vi) plumbing service. The total building occupancy is expected to be in excess of 800 and could at times slightly exceed 1,000.

INDIVIDUAL TRADES:

Sitework

Railings and handrails around Pier A will be repaired, missing parts will be replaced. The building will have access from all four sides. Bike rack will be provided for tenant(s). The Plaza's surface will be repaired and repaved where site-work occurred.

Structural work – sub-piers

8 masonry sub-piers below Pier A building have been repaired by BPCA.

Structural work - building

BPCA has constructed a replacement pier deck over the existing deck. The first floor in the Piershed, as reconstructed, has one center line of columns, restored from the existing multiple column lines. In addition, the three middle bays of the Piershed are now column-free. Wooden columns and beams supporting the second floor of the Pier have been steel reinforced to support a higher live load (150 lbs/sf).

Structural loads available:

1st floor live load expected: 150 lbs/sf*

2nd floor live load expected: 150 lbs/sf*

3rd floor live load expected: 150 lbs/sf*

Attic (above 2nd floor) live load expected: 50 lbs/sf (center) / 20 lbs/sf (edges—"exterior chase")**

Attic (above 3rd floor) live load expected: 50 lbs/sf**

Clock tower (at all floors) live load expected: 50/sf

Structure meets the requirements of the NYCBC

* Notwithstanding the foregoing, it has been determined that the load capacity of the foundation underlying the head house portion of the Pier (the northeast end of the Pier (approx. 2,295 sf per floor)) is limited to 50-100 lbs/sf.

** Attic loads may be revised as a result of a redesign of the mechanical system.

Exterior restoration work

Approximately 10% of the existing cladding will be repaired. However, the west end of the Pier was unfinished and new siding will be fully designed and installed along with a new balustrade, railing and balcony. Much of the metal siding and architectural detail on the east elevation was left unfinished and will be installed. Throughout the building missing trim, panels, molding, cornices, gutters and other architectural details will be installed. The standing seam tin plate roof will be repaired as needed and repainted.

Deteriorated wood elements, such as windows and trim, will be restored, repaired or replaced as needed. The historic exterior doors and frames will be restored. New doors and windows will be placed in openings where there is currently no fenestration.

All exterior walls will receive new insulation. Water barrier and sheeting will be replaced where missing or in need of repair.

Interior restoration work

Other than the staircase at the east end and adjacent wood wainscot, the first floor has no significant surviving original finishes; therefore no restoration work will occur except at the staircase. New finishes will be applied throughout the rest of the first floor. The second floor has certain existing historic finishes which will be restored. The existing wood flooring will be refurbished, and new flooring will be reinstalled to match the existing. It is expected that the historic second floor partitions in the Pier will be repaired or replaced along with their interior windows and doors. Throughout the second floor, it is anticipated that historic plaster molding, wood chair rails and base molding will be refinished and reinstalled where currently removed; new molding will be provided where the original is missing, anaglypta paneling in parts of the corridors will be refurbished if possible, and the Commissioner's Room in the western end of the floor will be restored to approximate its condition in 1930s. New finishes will be applied throughout the rest of the 2nd floor, 3rd floor and attics.

Mechanical

Heating and cooling is expected to be provided to the building by a river water heat pump system. Supplemental heating will be provided by the boilers located in the attic. All toilets will be provided with exhaust systems for proper ventilation (this is applicable only to those being provided by BPCA and not to those being added by Tenant). Main distribution ductwork will be distributed to the building's major zones and capped off for the tenant to distribute. HVAC systems are being designed with the following capacities:

Expected cooling: 240 Tons

Expected heating: 4000 Mbh

BPCA shall provide the specified heating and cooling capacities to the occupied spaces or within the mechanical spaces. The Tenant shall provide a distribution system for its required heating and cooling design loads. BPCA shall provide a radiant floor heating system in the first floor slab areas that are located on the pier over the water. Perimeter heating shall be the responsibility of the Tenant.

BPCA will provide a Direct Digital Control (DDC) building automation system for the control and monitoring of all HVAC systems.

The Tenant shall install the kitchen exhaust fans on the roof (subject to coordination with and approval by BPCA and the NYC Landmarks Preservation Commission) and kitchen exhaust ductwork. BPCA shall provide shaft space and space on the exterior roof for kitchen exhaust fans (see architectural drawings). The Tenant shall provide grease extraction scrubber units within its space for all grease exhaust ductwork.

BPCA shall provide the water source heat pump units with a source of outside air to accommodate the ventilation rate of 20 cfm/person. A makeup air unit providing tempered outside air shall be provided by BPCA in the 3rd floor attic. This unit will be sized for 30 tons of cooling and 8000 cfm of outside air.

The HVAC systems being provided by BPCA have been designed to an indoor sound level rating of NC45. The Tenant is responsible for providing the required acoustic attenuation for supply and return duct acoustics.

Utilities

The utilities to be provided are:

Gas load requested: 3,600 cfm

Electric load expected: 3,000 amps

The gas pressure will be as supplied by the utility. The connection point will be a valved outlet in the meter room. The Tenant is responsible for coordinating the metering requirements with the utility. The requested cold water demand is 90 gpm; the pressure will be as supplied by the utility. A 3-inch valved capped outlet will be provided in the ceiling of the first floor for the Tenant connection. The requested sanitary discharge is 120 gpm. A 4-inch plugged outlet will be provided in the pump room for the Tenant connection to the sanitary system.

Fire/Life Safety

BPCA will provide a new pre-signal addressable low voltage fire alarm system using an emergency voice/alarm communication system. The Tenant will be required to make modifications/expansions as required and to provide required staffing for operation and monitoring.

BPCA will provide automatic wet pipe sprinkler systems throughout all areas of the building. The Tenant will be required to make modifications/expansions as required. BPCA will provide an automatic wet fire standpipe to serve all areas of the building. The Tenant will be required to make modifications/expansions as required.

Telecommunications Infrastructure

BPCA will provide telecommunications service to the building with an MDF room and a wired LAN to specified outlet locations and terminations. The Tenant will be responsible modifying/expanding the system as required.

Sustainability

Pier A is subject to New York City Local Law 86, which requires that the project attain LEED Silver or better certification, and that it achieve specified increases in energy efficiency. The core and shell is being designed and filed as a LEED CS (core and shell) project. BPCA will work with the Tenant to determine the most practical and economical means for the Tenant to contribute to the effort to produce a LEED silver rating for commercial interiors.

EXHIBIT E
TENANT'S WORK AND OTHER OBLIGATIONS

A. Tenant's Work.

1. In accordance with this Exhibit E and all applicable provisions of this Lease, Tenant shall perform Tenant's Work with due diligence. Tenant's Work shall (i) be done in accordance with plans and specifications prepared by Tenant and submitted to Landlord for approval in accordance with the applicable provisions of the Lease, and (ii) be performed at Tenant's sole cost and expense, Tenant shall, at its expense, obtain all required licenses, permits and certificates and comply with all applicable governmental laws, regulations and other requirements in connection with the performance of said work. All Tenants' Work shall be done in a first-class workmanlike manner. Tenant's plans submitted to Landlord shall contain all drawings, applications and other materials required to be delivered to the Building Department of the City of New York and other required agencies.

2. Tenant's Work shall include the following items:

- Provide and install electrical outlets, electrical panels including associated conduit and wiring as necessary.
- Provide and install telecommunication outlets, wiring and associated equipment as necessary.
- Design and construct any interior walls, finishes and doors, as necessary.
- Provide and install interior lighting and lighting controls, as necessary.
- Provide for and install any additional temperature control systems and duct work required for Tenant's Use.
- Provide and install all necessary signage.
- Provide and install all interior furnishings, fixtures and equipment.
- Connect to the plumbing system provided, including all piping, fixtures, drainage and water, utilizing water-saving fixtures and components appropriate to the sustainability objectives for the building.
- Provide for egress and occupancy in compliance with the NYCBC, Americans with Disabilities Act and all other applicable rules, laws and regulations.
- Provide and install grease traps throughout, as applicable, and in accordance with all applicable rules, laws and regulations.
- Purchase, install and maintain all kitchen equipment fixtures and associated electrical power connections necessary for Tenant's Use. Such equipment could include, but is not limited to: walk-in refrigerators, stoves, ovens, grilles, counters and exhaust and fire suppression systems.
- Provide restrooms as necessary according to all applicable rules, laws and regulations.
- Provide a plan for servicing and loading of the Pier.
- Provide gas meter and gas piping to all gas kitchen equipment.
- Provide and install sprinkler protection for new architect layout as necessary.
- Design and construct ductwork extending from actual main branches to Tenant's cooling and heating terminal devices.
- Provide additional equipment or systems required to satisfy space usage.
- Provide all associated controls and connection to BMS.
- Provide and install required security and security access systems.
- Provide and install fire standpipe for new architectural layout as necessary.
- Provide and install domestic water pressure booster pumps to meet Tenant's minimum water pressure requirements as necessary.
- Provide and install gas pressure booster as required to meet the Tenant's minimum gas pressure requirements as necessary.
- Provide and install drainage piping and sewage ejection system(s) to convey sanitary waste to the base building system.

- Provide and install connections and modifications to the fire alarm system as necessary to coordinate with Tenant's architectural layout.
- Make modifications/expansions, as required, to building wet pipe sprinkler system, telecommunications infrastructure and LAN.
- Provide required acoustic attenuation for supply and return duct acoustics.

B. Protection of Adjacent Premises. It shall be Tenant's responsibility to cause each of Tenant's contractors and subcontractors to (i) maintain continuous protection of any premises adjacent to the Demised Premises in such manner (including the use of lights, guard rails and barricades and dust-proof partitions where required) as to prevent any damage to Landlord's Work or said adjacent premises by reason of the performance of Tenant's Work and (ii) secure all parts of Tenant's Work against accident, storm and any other hazard. However, no barricade or other protective device shall extend more than two (2) feet beyond the Demised Premises. Tenant shall have full and complete responsibility for securing the Demised Premises against vandalism, theft, etc. at all times, whether during construction or at any other time.

D. Materials and Rubbish. Anyone participating in Tenant's Work shall be required to remove and dispose of, at Tenant's cost and expense, as frequently and in such manner as Landlord may direct, all debris and rubbish caused by or resulting from Tenant's Work, and upon completion, to remove all temporary structures, surplus materials, debris and rubbish of whatever kind remaining on any part of the Building or in proximity thereto which was brought in or created in the performance of Tenant's Work. If at any time Tenant's contractors and subcontractors shall neglect, refuse or fail to remove any debris, rubbish, surplus materials, or temporary structures within two (2) days after notice to Tenant, Landlord, at its sole option, may remove the same at Tenant's expense.

E. Temporary Utility Charges. During the construction period of Tenant's Work, Tenant shall provide and pay for all connections for temporary water and electrical services brought to such point as Landlord shall determine. Tenant shall reimburse Landlord for all water and electrical current consumed during said period. Tenant shall also pay for the installation and removal of all temporary connections.

F. Utility Connections; Heating, Ventilation and Air Conditioning. See Article 38 of the Lease with regard to Tenant's responsibilities.

G. Permits, Licenses and Certificates. Upon approval by Landlord of Tenant's Construction Documents, Tenant shall, with reasonable speed and diligence and at its own sole cost and expense, file (by Building Notice, Alteration, or other acceptable form, in the case of the Department of Buildings of the City of New York, and by related miscellaneous applications in the case of fire protection or air pollution control) with the appropriate governmental authority or authorities and take whatever action shall be necessary to obtain and maintain all governmental certifications, permits, authorizations and approvals which may be required in connection with Tenant's Work. Copies of all such applications, approved plans and permits shall be submitted to Landlord promptly upon request by Landlord. Landlord shall cooperate with Tenant in connection with the aforesaid, but Landlord shall not be required to execute any instrument in connection with any such filings unless Landlord is satisfied that the facts and data set forth in such instruments are accurate. Prior to the commencement of Tenant's Work, Tenant shall submit to Landlord (i) copies of all certifications, permits, authorization and approvals that may be required in connection with Tenant's Work, and (ii) all insurance required to be maintained by Tenant or Tenant's agents, employees, contractors, or subcontractors pursuant to this Lease.

H. Historic Finishes and Partitions. During the period of the performance of Tenant's Work, Tenant shall be required to protect the historic finishes and partitions located on the second floor of the Building. Tenant shall not be permitted to alter said historic finishes and partitions at any time during construction, or thereafter at any time during the Term of this Lease.

I. Sustainability. Tenant will design and file its fit out work as a LEED silver commercial interiors project and will cooperate with BPCA in supporting the certification of the core and shell work as a LEED silver core and shell project.

EXHIBIT F:
DIVERSITY PROGRAM

This Diversity Program has been adopted by Battery Park City Authority ("Landlord") in order to give minority and women-owned businesses opportunity for meaningful participation in contracts entered into in connection Tenant's Work under this Lease of the entire interior space of the building known as "Pier A."

1. Definitions

The following terms shall have the meanings set forth below for the purposes of this Exhibit. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease:

(a) "Diversity Program." The program for diversity for MBE and WBE and for equal employment opportunities set forth in this Exhibit F.

(b) "Certified Business." A business verified as a minority or women-owned business enterprise by the Division or such other New York State agency authorized to make such certification.

(c) "Division". The Division of Minority and Women's Business Development of the New York State Department of Economic Development.

(d) "Director." The Director or the Executive Director of the Division.

(e) "Directory." The directory of certified businesses prepared by the Director for use by Owner and consultants in complying with the provisions of the Executive Law of the State of New York, Article 15-A.

(f) "Minority Group Member." A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (i) Black persons having origins in any of the Black African racial groups;
- (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(g) "Minority-owned Business Enterprise" ("MBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more Minority Group Members;
- (ii) an enterprise in which such minority ownership is real, substantial and continuing;

- (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated.

(h) "Women-owned Business Enterprise" ("WBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and which is independently owned and operated.

(i) "Tenant's Work." As defined in the Lease, and including (x) all construction agreements, and (y) all service and management agreements, agreements for the purchase of goods and services and other agreements, entered into by Tenant in connection with the performance of Tenant's Work.

2. Minority Business Enterprise (MBE) Participation and Women's Business Enterprise (WBE) Participation

(a) Tenant shall, and shall cause its Contractors to, provide meaningful participation by MBEs and WBEs in Contracts and Subcontracts for Tenant's Work. Tenant shall be deemed to have achieved this goal when the aggregate dollar value of Contracts and Subcontracts with MBEs and WBEs shall equal fifteen per cent (15%) and five per cent (5%), respectively, of the total dollar value of Contracts for Tenant's Work (the "Participation Plan"). In achieving such participation, Tenant is required to make good faith efforts, or shall cause its Contractors to make good faith efforts, to (i) conduct a thorough and diligent search for qualified MBEs and WBEs, and (ii) afford an opportunity to submit proposals for the Tenant's Work to those MBEs and WBEs found qualified. Tenant shall, and shall cause its Contractors to, meet with BPCA on a periodic basis as reasonably required by BPCA to review the operation and status of the Participation Plan and identify measures to be taken by Tenant to ensure that the MBE and WBE participation goals are met. (b) The total dollar value of Tenant's Work for purposes of determining compliance with the Diversity Program shall not include monies expended by, or on behalf of, Tenant for the following: security deposits given to Landlord, debt service, advertising costs, commitment and other loan fees and charges, government fees and taxes, costs of administering this Program, insurance premiums, utility charges and all other sums and charges paid to or on behalf of Landlord pursuant to the Lease or otherwise with respect to the Demised Premises and other items which Landlord has approved in its sole discretion as exempt items from "the total dollar value of Tenant's Work".

3. Workforce Participation

(a) Tenant shall, and shall cause its Contractors to, achieve the goal of participation of twenty per cent (20%) Minority Group Members and five per cent (5%) women in the workforce for each trade or services utilized in Tenant's Work.

(b) The participation for Minority Group Members and women employees must be substantially uniform throughout Tenant's Work.

(c) Tenant shall not, and shall cause its Contractors not to, participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

(d) In achieving such participation, Tenant is required to make good faith efforts, or shall cause its Contractors to make good faith efforts, to find and employ qualified Minority Group Members and women supervisory personnel and journeymen.

(e) Tenant shall meet and, if so requested by BPCA, shall cause its Contractors to meet, with BPCA, and such other persons as BPCA may invite, on a periodic basis as required by BPCA, to discuss issues relating to Minority Group Members and women workforce participation. At such meetings, Contractor shall report on the names of its Subcontractors then engaged in construction on the project to which Tenant's Work relates or which within 60 days are scheduled to be engaged in construction of such project, on the nature of the work and anticipated construction schedule of Contractor and Subcontractors, on the anticipated hiring needs of Contractors and Subcontractors, on the names of the responsible foremen directly employed by Contractor, and such information requested by Tenant that will then promote the employment of Minority Group Members and women. Contractor shall use its best efforts to obtain the above information and shall, upon Tenant's request, cause its Subcontractors to attend said meetings and provide the above information.

4. Compliance Reports.

(a) Tenant shall provide BPCA with Monthly M/WBE and Workforce Utilization Reports, by the last calendar day of each month, in forms to be provided by Landlord.

(b) Tenant shall maintain complete and accurate written records of its efforts to identify and contract with MBEs and WBEs as described above. Tenant shall also maintain complete and accurate written records of all contracts awarded for Tenant's Work, which records shall contain, without limitation, the dollar value of such awards and a description of the scope of the work awarded. Such records and other records deemed necessary by Landlord to document compliance with the Diversity Program including, but not limited to, copies of cancelled checks indicating payments to MBE/WBEs, shall be furnished to Owner at such times as Landlord may reasonably request.

5. Article 15-A. The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations promulgated thereunder.

EXHIBIT G:
OWNERSHIP OF TENANT AS OF EFFECTIVE DATE

The Tenant, Pier A Battery Park Associates, LLC, is owned 60% by the Poulakakos entity named Hanover Atlantic Gardens, LLC. Hanover Atlantic Gardens is owned by an entity owned by Peter Poulakakos and Paul Lamas and by Daniel McDonald, Michael Jewell and Jeannetta Stega. The Dermot Company entity owns 40% of Pier A Battery Park Associates, LLC and is named Dermot Pier A, LLC.

EXHIBIT H

PROPOSED FORM OF RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**RECOGNITION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT made as of the ____ day of _____, 2011, between The City of New York, a municipal corporation of the State of New York, having its principal office at City Hall, New York, New York 10007 (hereinafter collectively "Overlandlord"), and Pier A Battery Park Associates, LLC, a Delaware limited partnership having an office at 93 Pearl Street, New York, NY 10004 (hereinafter "Tenant").

WITNESSETH:

WHEREAS, Overlandlord is the ground lessor of certain real property situated comprising Block 16, Lot, in the City of New York, State of New York, pursuant to the terms of a Ground Lease dated as of October 6, 2008, wherein Battery Park City Authority ("Landlord") is the ground lessee (the "Ground Lease"), said real property being more particularly described in Exhibit A annexed hereto and made a part hereof, and the buildings and improvements erected thereon ("Ground Lease Premises");

WHEREAS, Landlord and Tenant entered into an Agreement of Lease dated _____, 2011 ("Sublease"), pursuant to which Sublease, Landlord is to lease a portion of the Ground Lease Premises (consisting of the interior of the building known as Pier A, and referred to hereinafter as the "Demised Premises") to Tenant; and

WHEREAS, Tenant desires to receive certain assurances that its possession of the Demised Premises will not be disturbed and Overlandlord is willing to grant such assurance; and

WHEREAS, the parties hereto desire to provide for the non-disturbance, non-termination and non-interference of the Tenant by the Overlandlord and for the attornment by Tenant to the Overlandlord and for the binding of the Overlandlord to Tenant under the Sublease as herein provided;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Overlandlord hereby consents to and approves the Sublease and the terms thereof and agrees that the exercise by Tenant of any of the rights, remedies and options contained in the Sublease shall not constitute a default under the Ground Lease.

2. Overlandlord agrees that so long as the Sublease shall be in full force and effect and not terminated by reason of any default thereunder, the Overlandlord shall not name nor join Tenant as a party-defendant or otherwise in any suit, action or proceeding to enforce the Ground Lease, nor will the Sublease, the term thereof or the rights granted to Tenant thereunder be terminated (except as permitted by the default provisions of the Sublease) or otherwise affected by enforcement of any rights given to the Overlandlord pursuant to the terms, covenants or conditions contained in the Ground Lease.

3. Provided that no default continues to exist under the Sublease on the part of Tenant, following the applicable notice and cure periods and any additional requirements under the Sublease, such that Landlord is then permitted to terminate the Sublease or to exercise any dispossession remedy provided for therein, the Overlandlord agrees that if Overlandlord terminates the Ground Lease by reason of a default or otherwise pursuant to the terms of the Ground Lease, the Sublease shall continue in full force and effect (without necessity for executing any new Sublease) for the balance of its term as a direct Sublease between Tenant and the Overlandlord, upon all of the same terms, covenants and provisions contained in the Sublease, and in such event:

(a) Tenant shall be bound to Overlandlord under all of the terms, covenants and provisions of the Sublease and Tenant hereby agrees to attorn to Overlandlord and recognize Overlandlord as "Landlord" under the Sublease, said attornment to be self-operative and self-executing; provided, however, that Tenant shall be under no obligation to pay rent to Overlandlord until Tenant receives written notice from Overlandlord that it has terminated the Ground Lease and succeeded to the interest of Landlord under the Sublease, in which case Overlandlord further agrees to indemnify, defend, protect and hold Tenant harmless from any liability it may suffer as a result of compliance with Overlandlord's written instructions to pay rent; and

(b) Overlandlord shall be bound to Tenant under all of the terms, covenants and provisions of the Sublease, which Overlandlord hereby agrees to assume and perform until the sale or other disposition of its interest by Overlandlord and assumption by the successor of the Overlandlord's obligations under this Section, and Tenant shall, from and after the date Overlandlord succeeds to the interest of "Landlord" under the Sublease, have the same rights and remedies against Overlandlord for breach of any covenant contained in the Sublease that Tenant would have had under the Sublease against Landlord, if Overlandlord had not succeeded to the interest of Landlord; provided, however, that Overlandlord shall not be:

(i) bound by any fixed annual rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord) unless so required by the Sublease or unless the security deposits and any other amounts deposited with any

prior landlord (including, without limitation the then defaulting Landlord) in connection with the payment of insurance premiums, assessments and other similar charges or expenses, to the extent such security deposits or other deposits have actually been transferred to Overlandlord; or

- (ii) bound by any amendment or modification of the Sublease made without its consent, provided; provided, however, that Overlandlord agrees it shall not unreasonably delay or withhold its consent to such amendment; or
- (iii) subject to any offsets or defenses which Tenant may have against the prior landlord (including Landlord) under the Sublease; provided, however, that the foregoing shall not be enforced or construed to deny to Tenant or limit its right to obtain any injunctive relief relating to any term, covenant or condition in the Sublease, or to preclude Tenant from exercising or obtaining any other right or remedy against a prior landlord (but not against Overlandlord) which may be accorded Tenant arising out of or relating to any prior landlord's default; or
- (iv) bound by any obligation to make any payment to Tenant under the Sublease except with respect to (a) any amount payable from a fund, reserve, deposit, credit, receipt or other amount if actually held or received by Overlandlord for such purpose, or (b) any obligation which arises after attornment, or (c) any Tenant cure and setoff rights under the Sublease arising after attornment; or
- (v) liable for any acts or omissions of any prior landlord (including, without limitation, the Landlord) under the Sublease except for acts or omissions which are then continuing and are subject to being cured by Overlandlord and such acts or omissions are subject to Tenant's cure and offset rights under the Sublease.
- (vi) bound by any covenant to undertake or complete any construction on the Premises or any portion thereof demised by the Sublease except the Landlord's Work.

5. Tenant, by its execution hereof, is not assuming any liability or obligation under the Ground Lease, nor is the Overlandlord assuming any obligation under the Sublease except as herein set forth.

6. Tenant agrees that it shall comply with all Requirements, as defined in the Ground Lease and Sublease, now or hereafter in force controlling or regulating the use of the Demised Premises by Tenant. Notwithstanding the above, Tenant shall have the right to test the validity of any Requirement or the application thereof at Tenant's sole cost and expense. During such contest, compliance with any such contested Requirement may be deferred by Tenant upon the condition that if any lien, charge or civil liability would be incurred by reason of such delay, Tenant shall indemnify and save harmless Overlandlord and Landlord against and from such lien, charge or civil liability, including reasonable attorney's fees and disbursements incurred in connection therewith.

7. Any notice or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to the Overlandlord: _____, or at such other address as may be designated by notice to Tenant, or (b) if to Tenant:

or at such other address as Tenant may designate by notice to Overlandlord. During the period of any postal strike or other interference with the mail, personal delivery or delivery by overnight courier shall be substituted for registered or certified mail.

8. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled, except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

10. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

11. This Agreement and the covenants herein contained are intended to run with and bind all land affected thereby.

12. This Agreement may be executed by the parties in counterparts.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

By: _____
Name:
Title:

By: _____
Name:
Title:

STATE OF)
)
COUNTY OF)

On the ____ day of November, 2010, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of _____, the _____ described in and which executed the foregoing instrument; and that he signed his/her name thereto by order of the board of directors of said _____.

Notary Public

STATE OF)
)
COUNTY OF)

On the ____ day of November, 2010, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto by order of the board of directors of said corporation.

Notary Public

**EXHIBIT A TO PROPOSED FORM OF RECOGNITION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT**

LEGAL DESCRIPTION OF GROUND LEASE PREMISES

BEGINNING at a point in the United States Bulkhead Line approved by The Secretary of War, July 31, 1941, having a coordinate of north 1918.003 west 9806.753:

- 1 Running thence easterly, on the arc of a circle curving to the left, whose radial line bears north 3°-44'-30" east, having a radius of 390.00 feet and a central angle of 22°-05'-50", 150.41 feet to a point of tangency;
- 2 Thence north 71°-38'-30" east, 42.70 feet;
- 3 Thence south 11°-05'-40" east, 33.46 feet;
- 4 Thence south 78°-54'-20" west, 0.50 feet;
- 5 Thence south 11°-05'-40" east, 2.50 feet;
- 6 Thence north 78°-54'-20" east, 0.50 feet;
- 7 Thence south 11°-05'-40" east, 42.40 feet to a point of curvature;
- 8 Thence southerly, on the arc of a circle curving to the right, having a radius of 220.00 feet and a central angle of 16°-37'-40", 63.85 feet to a point of compound curvature;
- 9 Thence still southerly, on the arc of a circle curving to the right, having a radius of 150.00 feet and a central angle of 38°-39'-00", 101.19 feet to a point of compound curvature;
- 10 Thence westerly, on the arc of a circle curving to the right, having a radius of 172.05 feet and a central angle of 32°-32'-03", 97.69 feet to a point of curve intersection;
- 11 Thence south 13°-16'-57" east, 50.86 feet to a point of curve intersection;
- 12 Thence westerly on the arc of a circle curving to the left, whose radial bears north 13°-16'-57" west, having a radius of 6.00 feet and a central angle of 180°-32'-31", 18.91 feet to a point of curve intersection;
- 13 Thence southerly, on the arc of a circle curving to the left, whose radial line bears north 75°-37'-11" east, having a radius of 313.40 feet and a central angle of 4°-55'-26", 26.93 feet to a point of curve intersection;
- 14 Thence south 70°-41'-45" west, 36.60 feet;
- 15 Thence north 13°-45'-00" west, 42.87 feet;
- 16 Thence south 76°-15'-00" west, 15.00 feet;
- 17 Thence south 13°-45'-00" east, 44.33 feet;
- 18 Thence south 70°-41'-45" west, 128.09 feet to a point in the United States Pierhead line approved by The Secretary of War, 1936;

19. Thence north $63^{\circ}-08'-48''$ west, along the United States Pierhead line approved by The Secretary of War, 1936, 114.45 feet to an angle point therein;

20. Thence north $61^{\circ}-08'-00''$ west, still along the United States Pierhead line approved by The Secretary of War, 1936, 202.53 feet;

The following three courses being along the lines of George Soilan Park as shown on map prepared by The City of New York, adopted by The Board of Estimate, November 13, 1981, Acc. No. 30071 and lines of property leased to Battery Park City Authority and B.P.C. Development Corp.

21. Thence north $77^{\circ}-35'-20''$ east, 231.35 feet;

22. Thence north $12^{\circ}-24'-40''$ west, 33.92 feet;

23. Thence north $54^{\circ}-49'-00''$ east, 171.52 feet to a point in The United States Bulkhead Line approved by The Secretary of War, July 31, 1941;

24. Thence north $12^{\circ}-24'-40''$ west, along The United States Bulkhead line approved by The Secretary of War, July 31, 1941, 62.26 feet to the point or place of BEGINNING.